TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 70

IRA TAYLOR, APPELLANT,

vs.

THE STATE OF GEORGIA

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

FILED MAY 5, 1941.

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 9, 1941.

—4714

[fol. 1]

IN SUPERIOR COURT OF WILKINSON COUNTY

BILL OF EXCEPTIONS—Filed July 26, 1940

Be it remembered that on the 29th day of April, 1940, at a regular adjourned term of the superior court of Wilkinson County, Georgia, before the Honorable Joe Ben Jackson presiding, there came on to be tried the case of the State of Georgia against Ira Taylor, the same being a prosecution for violation of Penal Code sections 715 and 716 (1933 Code of Georgia, 26-7408 and 7409).

During the trial of said case as aforesaid, to wit, on the 29th day of April, 1940, the defendant presented his demurrer to the indictment, the same having been filed on the said 29th day of April, 1940. After hearing argument thereon, the court overruled the defendant's demurrer to the indictment on each and every ground therein stated, and entered an order accordingly. To said ruling and judgment of the court overruling defendant's demurrer to the indictment, the defendant, on the 29th day of April, 1940, filed his bill of exceptions pendente lite as appears on record, and now assigns error on said ruling and judgment, and says that the court erred in overruling the defendant's demurrer on each and all of the grounds therein stated, as set forth in said bill of exceptions pendente lite of record. The bill of exceptions pendente lite was duly certified and made a part of the record by order of the court dated the 29th day of April, 1940, and the same was duly filed on said date.

Said case thereupon proceeded to verdict and judgment in favor of the State of Georgia and against the defendant Ira Taylor, the jury having brought in a verdict of guilty on said 29th day of April, 1940, and the court having passed sentence pursuant to said verdict on the 29th day of April, 1940.

Thereafter, to wit, on the 29th day of April, 1940, the defendant filed his motion for new trial. The defendant thereafter, in regular course and within the time allowed by law, and at the regular adjourned term of said court, [fol. 2] filed his motion in arrest of judgment. Said motion came on for hearing on the 22nd day of July, 1940, and after hearing argument thereon, the said motion was by the court overruled on each and all of the grounds therein

stated. To this judgment of the court the defendant excepted and now excepts and assigns error thereon, and says that the court erred in overruling said motion in arrest of judgment on each and all of the grounds therein stated.

Thereafter, in regular course and within the time allowed by law, the defendant filed his amended motion for new trial, with the evidence duly approved by the court and the charge of the court properly certified, the same having been filed on the 22nd day of July, 1940. Said motion for new trial, as amended, came on for hearing on said 22nd day of July, 1940, and the recital of facts and the several grounds of the motion were duly approved by the court, and counsel for the defendant having stated in open court that the defendant waived and would not insist upon the general grounds of his motion for new trial; and after hearing argument on said motion, the same was overruled on each and all of the grounds therein stated. To this judgment of the court overruling his said motion, the defendant excepts and says that the court erred in overruling said motion for new trial, as amended, on each and all of the grounds therein stated.

The defendant specifies the following portions of the record in said case as material to an understanding of the errors complained of in this bill of exceptions:

(1) The indictment of the defendant Ira Taylor, returned at the October, 1939, term of Wilkinson superior court, together with all entries thereon.

(2) Defendant's demurrer to the indictment filed on the 29th day of April, 1940, together with the judgment and order of court overruling same of said date.

(3) Exceptions pendente lite filed by defendant Ira Taylor on April 29, 1940, together with certificate of the judge [fol. 3] thereon.

(4) Verdict of the jury rendered April 29th, 1940, together with the sentence of the court thereon.

(5) Motion for new trial filed April 29, 1940, by defendant Ira Taylor, together with the order of the court thereon and other entries.

(6) Motion in arrest of judgment filed by the defendant Ira Taylor, together with all entries thereon, and order of court overruling same.

(7) Brief of the evidence, together with certificate of the judge thereon, dated July 22nd, 1940.

(8) Charge of the court, together with approval of the judge thereon, dated May 20th, 1940.

(9) Refusal of request to charge, together with the certificate of the judge thereon dated April 29, 1940.

(10) Amended motion for new trial, together with the certificate of the judge thereon, dated July 22, 1940.

(11) Order of the court overruling the amended motion for new trial dated July 22, 1940.

(12) Pauper's affidavit signed by Ira Taylor, filed on the 22nd day of July, 1940.

(13) Certificate of attorney T. T. Purdom, counsel for the defendant, signed and certified before the judge of the superior court on the 22nd day of July, 1940.

And now, within the time provided by law, and within twenty (20) days of the entry of the judgment overruling said motion in arrest of judgment and said motion for new trial, as amended, comes the defendant and tenders this, his bill of exceptions, and prays that the same may be certified as provided by law, in order that the errors complained of may be considered and corrected by the Supreme Court of Georgia.

The Supreme Court of Georgia and not the Court of Appeals has jurisdiction of this writ of error, because the case involves constitutionality of Penal Code sections 715, [fol. 4] 716 (Code of Georgia, 1933, 26-7408 and 7409), for a violation of which statute defendant was convicted; all questions other than the constitutionality of the statute having been waived by the defendant.

T. T. Purdom, Attorney for Defendant, Ira Taylor.

P. O. Box No. 12, Sparta, Ga.

[fol. 5] CERTIFICATE

I do certify that the foregoing bill of exceptions is true, and specifies all the evidence, and specifies all of the record material to a clear understanding of the errors complained of; and the clerk of the superior court of Wilkinson County,

Georgia, is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the present term of the Supreme Court of Georgia, that the errors alleged to have been committed may be considered and corrected.

This 22 day of July, 1940.

J. B. Jackson, Judge, Superior Court, Wilkinson County, Georgia.

ACKNOWLEDGMENT OF SERVICE

Due and legal service of the within and foregoing bill of exceptions and certificate thereon acknowledged. Copy received. All other and further notice and service is hereby waived.

This 22 day of July, 1940.

C. S. Baldwin, Jr., Attorneys for the State of Georgia.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 6] [File endorsement omitted.]

[fol. 7] IN SUPERIOR COURT OF WILKINSON COUNTY

INDICTMENT

The grand jurors selected, chosen and sworn for the county of Wilkinson, to wit:

1. Sol Isenberg, Foreman.
2. Oscar Walters.
3. W. O. Freeman.
4. C. G. Kitchens.
5. R. Rozar.
6. T. W. Snow.
7. H. N. Lord.
8. L. S. Tigner.
9. W. W. Ryles.
10. J. B. Stucky.
11. David Miller.
12. V. P. Jackson.
13. G. C. Thompson.
14. J. H. Etheridge.
15. H. E. Bloodworth.
16. H. M. Williams.
17. W. W. Hill.
18. J. R. Martin.
19. J. M. Youngblood.
20. I. C. Golden.
21. W. C. Bentley.
22. J. R. Brooks.
23. W. R. Lamb.

In the name and behalf of the citizens of Georgia, charge and accuse Ira Taylor of the county and State aforesaid with the offense of misdemeanor for that the said accused on 25 day of March in the year of our Lord nineteen hundred and thirty nine in the county aforesaid, did then and there unlawfully and with force and arms; after having contracted with R. L. Hardie to do manual labor for him at $1.25 a day in helping build a house on the farm of R. L. Hardie where he then resided in said county said work to begin when R. L. Hardie called for him to start and to continue until he had worked out the sum of $19.50, did on the strength of said contract procure an advance on said labor of $19.50, with intent not to perform same and did fail and refuse to perform same without good and sufficient cause and did fail and ~~refuse to pay same without good and sufficient cause and did fail and~~ refuse to pay the money so advanced back at the time the work was to be performed, to the loss and damage of the hirer contrary to the laws of [fol. 8] said State, the good order, peace and dignity thereof.

R. L. Hardie, Prosecutor; C. S. Baldwin, Jr., Solicitor-General.

Wilkinson Superior Court, Oct. Term, 1939.

Special Presentment

We, the jury, find the defendant guilty *Guilty*. This the 29 day of April, 1940.

A. E. Bloodworth, Foreman.

Witnesses for the State:
R. L. Hardie, the Defendant.

Plea of Not Guilty

Waives copy of indictment and list of witnesses also waives being formerly arraigned and pleads not guilty.

C. S. Baldwin, Jr., Solicitor-General; Willis I. Allen, Defendant's Attorney.

April 29, 1940.

No. 436. Wilkinson Superior Court, Oct. Term 1939. The State vs. Ira Taylor. Misd. True Bill. Sol Isenberg, Foreman; R. L. Hardie, Prosecutor; C. S. Baldwin, Jr., Solicitor-General. Special Presentment.

[fol. 9] In Superior Court of Wilkinson County

The State

vs.

Ira Taylor

General Demurrer to Indictment

Now, comes your defendant, Ira Taylor and files this his general demurrer to the State of Georgia's indictment, and as grounds therefor respectfully shows to the court:

First. The indictment against this defendant is based upon and predicated on sections 26-7408 (715 P. C.), and 26-7409 (716 P. C.) of the 1933 Code of Georgia, a copy of said Code sections are hereto attached, made a part hereof, and marked exhibit "A." The crime charged against your defendant is that he has violated said Code sections and is therefore guilty of a misdemeanor.

The statute under which your defendant was indicted, marked exhibit "A," is unconstitutional, iliegal and void in that the same is in violation of the 13th amendment of the constitution of the United States, reading as follows:

"Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this article by appropriate legislation."

Under this statute it is sufficient for a conviction to show, and the court to charge the jury, simply that the accused had made the contract in question, had not completely fulfilled it, had refused to return the money or to perform the labor without good and sufficient cause, without otherwise showing any fraudulent intent on the part of the accused.

In so far as the refusal without just cause to perform the labor called for, or to return the money, is made prima facie [fol. 10] evidence of an intent to defraud, by its necessary operation and obvious effect, the fundamental purpose of the statute is to compel, under the sanction of the criminal law, enforcement of the contract for personal services, and its natural and inevitable effect is to expose to conviction

for crime those who simply fail or refuse to perform contracts for personal services in liquidation of a debt, and thus seeks to provide, the means of compulsion through which performance of such service may be secured.

There is no rational connection between the fact of failing to complete the service or to return the money and the presumption of fraudulent intent, and such a presumption is arbitrary, unreasonable and offends against the prohibition of the 13th amendment of the Federal constitution against involuntary servitude except as punishment for crime. It also offends against said constitutional prohibition by attempting to do indirectly by the creation of a statutory presumption something that it could not do by direct enactment.

Wherefore, said indictment is unconstitutional, illegal and void, and sets forth no offense that has been committed, by this defendant.

Second. Said indictment is further unconstitutional, illegal and void, and sets forth no cause of action against this defendant for the reason that the statute in question, marked exhibit "A" is in violation of an act of Congress of March 2, 1867 (8 U. S. C. A. sec. 56) reading as follows: "The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in the territory of New Mexico, or in any other territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of the territory of New Mexico or of any other territory or State which have heretofore established, maintained, or enforced, or by virtue of which any [fol. 11] attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void."

While the State may impose involuntary servitude as punishment for crime, it may not compel one man to labor for another in payment of a debt, by punishing him as a criminal if he does not perform the service or pay the debt. Since it cannot punish the servant as a criminal for a mere failure or refusal to serve without paying his debt, it is not permitted to accomplish the same result by creating a statutory presumption which, upon proof of no other fact, exposes him to conviction and punishment.

Third. Said indictment is further unconstitutional, illegal and void, and sets forth no criminal act on the part of this defendant for the reason that said statute marked exhibit "A" and said indictment is in further violation of the 14th amendment of the constitution of the United States reading as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protections of the laws."

The indictment of your defendant is in violation of said amendment he is indicted under a void statute, the court is without jurisdiction to try him and any sentence that the court may pass would be a nullity and his conviction thereunder and his detention thereunder would be illegal.

Wherefore, the defendant prays that these his grounds of demurrer be inquired into by the court and passed upon [fol. 12] and that said indictment be dismissed, stricken, and declared null and void.

—— ——, Defendant's Attorney.

Fourth. Said indictment and the facts alleged therein purports to set forth, charge and accuse the defendant of the offense of a misdemeanor in that the defendant has violated sections 26-7408 and 26-7409 of the 1933 Code of Georgia, said statute attached hereto made a part hereof and marked exhibit "A," and section 26-7409 of the 1933 Code of Georgia, as follows: "26-7409 (716 PC) proof of Intent to Defraud.—Satisfactory proof of the contract, the procuring thereon of money or other thing of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section, (Acts 1903, pp. 90, 91)," is unconstitutional and void for the reason that the presumption created by it (section 26-7409) is so unreasonable and arbitrary as to amount to a denial of due process of law in violation of the 14th

amendment to the constitution of the United States reading as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Said statute is further unconstitutional in that it operates to deny the defendant a fair opportunity to repel it and therefore violates the due process clause of the 14th amend-
[fol. 13] ment, said amendment set out above; and for the further reason said section 26-7409 is unconstitutional and violates the 14th amendment to the constitution of the United States because it is not within the province of the legislature of the State of Georgia to declare an individual guilty or presumptively guilty of crime, and for the further reason that the connection between the facts alleged and those presumed by this statute is not sufficient to charge the accused with a criminal offense as reasoning does not lead from one to the other.

Fifth. The crime with which the accused is charged is based upon the act of 1903 pages 90 and 91, Georgia Laws, which act is codified as two Code sections, to wit: 26-7408 and 26-7409, said act attached hereto made a part hereof and marked exhibit "A." Said act of the Georgia Legislature is unconstitutional and void for the reasons that the presumption created by it is so unreasonable and arbitrary as to amount to a denial of due process of law, and that it operates to deny the defendant a fair opportunity to repel it, and that it is not within the province of the legislature of the State of Georgia to declare an individual guilty or presumptively guilty of crime, all of which violates the 14th amendment to the constitution of the United States, said amendment set forth in paragraph four of this demurrer.

Wherefore, the defendant prays that these his grounds of demurrer be inquired into by the court, passed upon and that said indictment be dismissed, stricken, and declared null and void.

T. T. Purdom, Victor Davidson, W. I. Allen, Defendant's Attorney-.

ORDER OVERRULING DEMURRER

Overruled April 29, 1940.

J. B. Jackson, J. S. C. O. C.

[fol. 14] EXHIBIT "A" TO DEMURRER

26-7408 (715 PC.) Procuring money on contract for services fraudulently.—Any person who shall contract with another to perform for him services of any kind, with intent to procure money or other thing of value thereby, and not to perform the service contracted for, to the loss and damage of the hirer, or, after having so contracted, shall procure from the hirer, money, or other thing of value with intent not to perform such service, to the loss and damage of the hirer, shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor. (Acts, 1903, p. 90).

26-7409 (716 PC.) Proof of intent to defraud.—Satisfactory proof of the contract, the procuring thereon of money or other thing of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section (Acts 1903, pp. 90, 91).

[fol. 15] IN SUPERIOR COURT OF WILKINSON COUNTY

[Title omitted]

EXCEPTIONS PENDENTE LITE

Be it remembered in said stated matter that at the April, 1940, term of the superior court of Wilkinson County before the final judgment in the case of The State of Georgia vs. Ira Taylor the court overruled the general demurrers of the defendant, Ira Taylor, to the indictment returned by the grand jury of said county and the allegations and alleged offense charged against him in said bill of indictment whereupon the defendant, Ira Taylor then and there

excepted, now excepts and assigns the same as error, and prays that this his bill of exceptions pendente lite be certified to as true and ordered placed on the record.

This 29th day of April, 1940.

T. T. Purdom, Victor Davidson, W. I. Allen, Defendant's Attorney.

CERTIFICATE

The foregoing bill of exceptions pendente lite is hereby allowed and certified to as true. Let the same with this certificate be placed upon the record.

Done in open court this 29th day of April, 1940.

J. B. Jackson, Judge of Superior Court of Wilkinson County, Georgia.

[fol. 16] IN SUPERIOR COURT OF WILKINSON COUNTY

VERDICT

We, the Jury find the defendant guilty *guilty*.

This the 29 day of April, 1940.

A. E. Bloodworth, Foreman.

IN SUPERIOR COURT OF WILKINSON COUNTY

THE STATE

vs.

IRA TAYLOR

JUDGMENT—April 29, 1940

Whereupon, it is considered, sentenced and adjudged by the court, that the defendant do pay within three days a fine of $35.00 dollars to include: cost of the solicitor-general, clerk and sheriff, and the cost of the committing court, including the fees of witnesses, if any, and then be discharged, or in default of such payment, that the said defendant do work in a public works camp, or on such other works as the county authorities may employ the convicts, for and during the term of 8 months, fully to be completed

and ended, and then be discharged; and it is further ordered that this sentence begin and be counted from the time of the reception of the said defendant in the public works camp under this order and judgment. In the event this fine is paid this is a probationary sentence as provided by law.

Sentenced pronounced and signed this 29 day of April, 1940.

J. B. Jackson, Judge Superior Court Ocmulgee Circuit.

[fol. 17] * * * [Motion for new trial and Motion to arrest judgment omitted] * * *.

In Superior Court of Wilkinson County

[Title omitted]

Brief of the Evidence

Trial on the 29th day of April, 1940, during the April Adjourn Term, 1940, of Wilkinson Superior Court, before his Honor, J. B. Jackson, Judge, and a jury.

Appearances

For the State C. S. Baldwin, Jr., Solicitor-General.

For the Defendant Victor Davidson, W. I. Allen, T. T. Purdom.

R. L. Hardie, sworn for the State, testified substantially:

Direct examination.

By Mr. Baldwin:

I am R. L. Hardie. I know the defendant, Ira Taylor, quite well. On the 25th day of March, 1939, he made a contract with me to do manual labor at the time I let him have his money.

The type work he was to do was to help me in building a house on my place in Wilkinson County. He was to help me build it when I called on him. I was to pay him $1.25 a day.

On the strength of that contract I advanced him in money the sum of $19.50. I let him have the cash on or about the 29th of March. I sent him word when I was ready for him. [fol. 18] Later I went to see this negro myself and asked him why he didn't come on to work. He told me he didn't want to work and thought he would get up the money. He told me he got the word. He has never paid me any of the money back.

If this negro had a good and sufficient cause for failing to do that work, I don't know of it. If he was sick I don't know of it. I don't exactly remember if he was working for some one else; but he was not working for any one else when I needed him. He told me he was tired and said something about being sick, but I saw him at a distance every day.

Since March, 1939, I have seen him working. He has never paid any of that money back and I lost the money ($19.50) that I advanced him for the reason of him not coming and working as he agreed to do.

I made the contract with him in Wilkinson County. He was to perform the work in Wilkinson County and I advanced him the money in Wilkinson County.

Cross-examination.

By Mr. Allen:

I had known this negro for about four months before the loan that I mentioned. The only business I had had with him besides the advancement of the $19.50 on this contract was only some business in my store. He traded at my store a little bit. I rented him a house.

I have taken no legal steps besides this prosecution to collect that money. I haven't filed any suit in the Justice of the Peace Court, nor have I had any property attached.

Cross-examination.

By Mr. Davidson:

He moved to my brother-in-law's place which is next to me about January 1st, last year. He had been living in one of my houses. He worked for my brother-in-law. When he came to my place I don't know where he lived. I don't know when he came to my place. He came there before June. As to how long before June I don't know. I don't know if it

was in the spring, I have so much to remember, I couldn't [fol. 19] exactly say. I remember when I let him have the $19.50. I didn't let him have any money in Toomsboro. I had him arrested in Toomsboro. I understood the negro said that Mr. Wood said that it would take $2.00 to turn him out. That $2.00 is not part of the $19.50. He was to pay $4.00 a month for the rent of my house. He stayed on my place three months without paying his rent.

This fellow down here and I settled it with the sheriff and let this negro have the money. I turned the money over to him (the defendant).

When I let him have the money I don't know whether or not the sheriff was after him—the store was crowded and I let him have the money to settle up, and he agreed right there in the store, if I did it, he (the defendant) would pay me. He got money twice on the same day. That's not part of the $19.50.

Well, now, I don't exactly remember when it was I had him arrested the first time. I have so much business I can't remember, but I remember paying that down at Toomsboro. He (the defendant) said he wanted to pay, he said here is $4.00 if you will let me, I will pay up. I didn't take it.

I don't know how long they kept him in jail. I really don't know if it was two or three months.

He came to live with me before June or July. I let him have the money before he came to live with me. It was about 3/25/39. It was before March 1939 when I let him have the money. I am not sure what day. The reason I am not going to be sure is because "sometimes business in the store, it is a good while before I itemize the account, or other words charge them. It would come back to my memory, then I would have to get them right, about the date I don't remember."

I can't tell you about when he left my place because I have so much business I couldn't keep up with it. He left his things in the house. I went over there, left word at the [fol. 20] house for him to come to go to work, and pay me, or come and move his things out of the house, but he didn't come.

This all happened about the time I took the warrant out for him. I took the warrant out last year. This was since I had him arrested down in Toomsboro. This was about March 5th, 1939.

I first told him I wanted him to help build the house some time in June. It was about June 6th.

I am sure I told him how much I was going to pay him. My mother gave him a dollar to plough for her, and when he came down to live in my house, I thought it would help mother to have him there, to help her work, after he got laid off, he left down there.

I started building the house about the 1st of June, and I called for him to work before that time. I had the agreement to pay him a $1.25 a day before I started building the house.

State rests.

Defendant's Statement—Ira Taylor:

The first time I moved to get my money, Mr. Hatcher sent me to the mines to work. I went down and said Mr. Hatcher let me have a house. I told him about it and about that time, Mr. Wood came up there with a warrant and about $6.00, and he asked me to come and work, and I told him I would unless I was sleepy, you see I work at night, and he never did call on me to work, that I didn't go up, but one evening; after I got gassed at the mine, and I couldn't pay house rent, when I got able to go to work again, they laid me off, laid off a portion of us. I went down to Toomsboro, and went to work, before I had made a pay day, he had Mr. Wood to lock me up, and before I got my things they locked my things up in the house over there. That's all the money I borrowed, $6.00 first and $5.75 the last time. He got a check from me down at McIntyre, I owed the doctor a dollar, and he got the check and I didn't get any money out of [fol. 21] it. He told me I could get some, he told me he would give me some when I got him. I didn't get any, he said I owed him too much, now, the time he had me locked up at Toomsboro, Mr. Hatcher asked him if he would take $5.00 down and $5.00 a week. He said he wouldn't. He asked me to come back. I haven't signed a contract with him or any one else, since I left Mr. Asbell.

(Mr. Purdom: State whose house that property was locked up in, whose house your stuff was in). It is in Mr. Hardie's house, I rented the house from him, and after I went to Toomsboro and went to work, I got locked up down there, and he had my house and things locked up, and so I

had Mr. Barnes to come over and take sale on it. I told him I didn't owe him but $8.00. The things are still over there now.

Defendant rests.

Mr. R. L. Hardie, recalled for the State, testified substantially:

Direct examination.

By Mr. Baldwin:

This negro never offered to pay any money until I had him indicted. This is what he said about dropping the case "He told me down on the porch when court was going on in April, on Tuesday, morning he came down and he asked me if I was settled it, I told him I thought I got it settled this week."

Cross-examination.

By Mr. Purdom:

My place of business is above McIntyre, I am a country merchant. At times I lend money and help those who trade with me.

I let him (the defendant) have my money at the time he was working at Edgar Bros. Off and on they laid him off a half dozen times, while he was living with me. I thought Mother would get to work him, and I loaned this negro the money to settle up. No part of the money I lent him was for house rent. I lent him the money and he paid up the [fol. 22] warrant. No part of it was for a doctor bill.

I lent him the money to pay up a warrant about March 3d, or 5th, 1939. In the morning I let him have some money. I just don't remember how much I let him have the first time,—it's just like this, I put it on the book before I go out of the store—some one told him he'd better pay him—after that I loaned him money to buy medicine and paid Dr. McBoyd.

I loaned him the money and he says he will work it out because he didn't work regular at the mine, that gave him a three month lay off and I told him I would let him have the money if he would work for me. I let him have the

money to straighten out another matter. He handed it to the deputy sheriff.

I didn't state then when I would start the work, he worked at my mother's and I thought I would let him help her plow.

When I let him have the money he was supposed to start working for me in about a month or six weeks.

I bought the lumber and the weather conditions were such I couldn't get the lumber, I was going to start him working on building the house in about a month or six weeks but the fellow who was cutting logs said he had to wait until the ground dried up, as on the first load he bogged down.

I don't know how long before the lumber came that I had the contract with this negro, I couldn't build the house before I got the lumber and I don't remember exactly how long it was after I made the contract with this negro before I got the first load of lumber.

I made the contract with him along about the second day of 1939. The load of lumber in February bogged down and I didn't get the lumber until June.

You asked me when I made the contract with this negro. It was February 1, 1939, and I got the lumber in June. [fol. 23] Then, it couldn't have been six weeks since he got the money. But, I told him I was going to buy $150.00 worth of wire and I was going to ve the surveyor run some lines and I was going to put up $206.90 worth of wire, but I didn't get any help out of him.

You ask if I called on him to help put up the wire. "No, sir, he didn't know them."

I don't know when I put up the wire, but I will tell you when we got through with it. It was towards the last of December, 1939.

I built the house before I put up the wire.

This negro was in Kalamazoo. I don't know when he left Kalamazoo.

I wouldn't be sure that this agreement was made in February that he was going to work for me about six weeks later and that I just testified to that, but I will tell you one thing. It would be 3-25-39 when he started off, when he started getting the money.

He started to getting the money on 4-25-39. It is right that on 4-25-39 I made the agreement, that he was to work for me.

He got the money on the day we made the agreement 4-2-39. No, sir, he didn't make the agreement before he got the money, he has got too much sense for that.

Question: "How then could he have made the agreement to work out the $19.50 if he hadn't got the money before he made the agreement?"

Answer: "Maybe I didn't get you right, you are not going to tangle me up."

Question: "Will you answer the question?"

Answer: "Yes, sir, that's what you want me to do, I didn't bring this negro up here to persecute him."

Question: "Answer the question, go ahead, answer the question."

[fol. 24] By the Court: "Did he get money from you on the day on which he made the contract with you?"

Answer: "He didn't get it all that day."

By the Court: "How much did it take that day?"

Answer: "It was about $10.50."

By the Court: "Did he make a contract that day?"

Answer: "Yes, sir."

It was not until after the rainy spell in June and July that we started building the house. I could swear this negro was not sick in bed. He was walking around. He could be sick and not in bed. I gave him a long time, then I took out a warrant. I should have taken something else but I didn't."

State rests.

Defendant rests.

I, T. T. Purdom, attorney for Ira Taylor, and I, C. S. Baldwin, Jr., attorney for the State of Georgia, do agree that the above is a true and correct brief, of the evidence. This 12 day of July, 1940.

T. T. Purdom, C. S. Baldwin, Jr.

Order Approving Brief of Evidence

I do hereby certify and approve the above as a true and correct brief of the evidence. This 22 day of July, 1940, I order same filed as part of the record.

J. B. Jackson, Judge Superior Court, Wilkinson County.

[fol. 25] In Superior Court of Wilkinson County

[Title omitted]

Charge of the Court

Gentlemen of the Jury:

The grand-jury of this county has returned an indictment against Ira Taylor, the defendant at the bar, in which he is charged with the offense of a misdemeanor. To this indictment the defendant has entered his plea of not guilty; and the indictment on the one hand and the plea on the other form the issue which you, as jurors, have been impaneled to try.

The indictment alleges in the name and behalf of the citizens of Georgia, charge and accuse by special presentment, Ira Taylor, of the county and State aforesaid, with the offense of a misdemeanor, for that the said accused on the 25th day of March, 1939, in the county and State aforesaid, did then and there unlawfully and with force and arms, after having contracted with R. L. Hardie to do manual labor for him at a dollar and a quarter a day, in helping to build a house on the farm of R. L. Hardie, where he then resided in said county, said work to begin when R. L. Hardie called for him to start, and then to continue until he had worked out the sum of $19.50 did on the strength of said contract, procure an advancement of said labor of $19.50 with intent to perform same and did fail and refuse to perform same without good and sufficient cause, and did fail and refuse to pay the money so advanced back at the time the work was to be performed to the loss and damages of the hirer, contrary to the laws of said State, the good order, peace and dignity thereof.

The defendant's plea of not guilty challenges and denies every material allegation in this indictment, and the burden is upon the State, before it can ask at your hands the con-[fol. 26] viction of the defendant, the burden of proving his guilt, as charged, beyond a reasonable doubt.

Now, gentlemen of the jury, the defendant enters upon his trial with the presumption of innocence in his favor, and this presumption remains with him, abides with him, throughout the trial, until it is overcome by evidence sufficiently strong to satisfy you of his guilt to a reasonable and moral certainty and beyond a reasonable doubt.

Now, a reasonable doubt is just what the term implies. It is a doubt based upon reason, a doubt for which you can give a reason. It is not a fancy or conjecture or supposition that the defendant might be innocent; but, it is such a doubt as a reasonable man would have, act upon, or decline to act upon, in a matter of importance or of grave concern to him. In other words, it is the doubt of a fair-minded, impartial juror, honestly seeking for the truth; and it may arise from a consideration of the evidence, or from a lack of evidence, or from a conflict of evidence, or from the statement of the defendant. If, after considering all the facts and circumstances of this case, giving the defendant's statement just such weight and credit as you think it entitled to receive, your mind is wavering, unsettled, not satisfied, then that is the reasonable doubt under the law. And, if upon a consideration of the evidence and the defendant's statement, or from the defendant's statement alone, such a doubt rests upon your mind, it is your duty to give the defendant the benefit of that doubt and acquit him. If, on the other hand, however, no such doubt rests upon your mind, it would be equally your duty to return a verdict of guilty as to him.

In all criminal trials the defendant shall have the right to make to the court and jury such statement in the case as he may deem proper in his defense. It shall not be under oath and shall have such force only as the jury may think right to give it. They may believe it in preference to [fol. 27] the sworn testimony in the case.

Availing himself of his right under our statute, this defendant has made a statement. You may believe this statement, as I have said, in preference to the sworn testimony in the case, if you see proper so to do. You may believe it entirely as true, you may reject it entirely as untrue. You may believe that statement partially as true, you may reject it partially as untrue. The force, weight and credit to be given to the defendant's statement is a matter entirely for you as jurors honestly seeking for the truth in the case.

Direct evidence is that which immediately points to the question at issue. Indirect, or circumstantial evidence, is that which only tends to establish the issue by proof of various facts, sustaining by their consistency the hypothesis claimed.

To warrant a conviction on circumstantial evidence, the proved facts must not only be consistent with the hypothesis of guilt, but they must exclude every other reasonable hypothesis, save that of the guilt of the accused. I charge you, however, that whether dependent upon direct or circumstantial evidence, the true test in all criminal cases is, not whether the conclusion at which the evidence points may be false, but whether or not the evidence is sufficiently strong to satisfy your minds and consciences to a reasonable and moral certainty and beyond a reasonable doubt, of the defendant's guilt. If the evidence is thus strong, it would be your duty to convict. If it is not thus strong, it would be equally your duty to acquit. And I charge you that your duty as jurors demands, not only the conviction of the guilty, but the acquittal of the innocent as well.

Gentlemen of the jury, this man is indicted under the following section of the criminal Code of Georgia, which is section 715: If any person shall contract with another to perform for him services of any kind, with intent to procure [fol. 28] money or other things of value thereby, and not perform the services contracted for, to the loss and damage of the hirer, or, after having so contracted, shall procure from the hirer money, or other things of value, with intent not to perform such service, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor.

Now, gentlemen of the jury, paragraph 716 of the Criminal Code of Georgia reads as follows: Satisfactory proof of a contract, the procuring thereon of money or other things of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section.

Gentlemen of the jury, I charge you the burden is upon the State to show affirmatively that the accused failed to perform the services contracted for, if they show a contract, and failed to return the money advanced on the strength of the contract. The State must prove that there was no good reason why contract was not performed, or no good reason why accused did not return the money advanced to him on the strength of the contract. The State

of Georgia must show that the accused failed to perform the contract and in failing to perform the contract, the defendant did so without good and sufficient cause.

Now, gentlemen of the jury, if the State of Georgia has proven each and every material allegation in this bill of indictment to a reasonable and moral certainty and beyond a reasonable doubt, then the form of your verdict would be: "We, the jury, find the defendant guilty." On the other hand, if the State either from the lack of evidence, or for the want of evidence, or for any other reason, has failed to [fol. 29] prove each and every material allegation in this bill of indictment, to a reasonable doubt, it would be your duty to acquit this defendant, then the form of your verdict would be: "We, the jury, find the defendant not guilty."

The defendant contends that he is not guilty, he contends by his statement, by the argument of his counsel, he contends that the State has failed to make out a case under the rules of law of Georgia; he contends the State has not proved each and every material allegation in the bill of indictment to a reasonable and moral certainty and beyond a reasonable doubt. Now, if that be the truth of the case, it would be your duty to acquit this defendant, or for any other reason you are not satisfied that the State has carried the burden, then he should be acquitted.

Now, gentlemen of the jury, if after considering all facts and circumstances of the case, including the defendant's statement, if you are satisfied to a reasonable and moral certainty and beyond a reasonable doubt of the defendant's guilt, it would be your duty to convict him, and the form of your verdict in that event would be: "We, the jury, find the defendant guilty."

On the other hand, gentlemen of the jury, if you are not satisfied to a reasonable and moral certainty and beyond a reasonable doubt that this defendant is guilty, if the State of Georgia has not proven each and every material allegation as contained in the bill of indictment, not one, but each and every one, of his guilt, it would be equally your duty to acquit this defendant, and the form of your verdict would be: "We, the jury, find the defendant not guilty."

When you have made your verdict, date it, sign it by your foreman, and return it into court.

You may retire, gentlemen, and consider your verdict.

[fol. 30] The within and foregoing charge is hereby approved and ordered filed as a part of the record in said case.

This the 20th day of May, 1940.

J. B. Jackson, J. S. C., O. C.

In Superior Court of Wilkinson County

[Title omitted]

Defendant's Requested Charge, Refused

Now comes the defendant and request- the Court to charge the jury as follows:

Gentlemen of the jury, I will not charge you section 26-7409 of the Penal Code of Georgia which reads as follows: Satisfactory proof of the contract, the procuring thereon of money or other things of value, the failure to perform the services so contracted for, or failure to return the money, so advanced, with intent thereon at the time said labor was to be performed, without good and sufficient cause, and loss of damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section."

The reason I refuse to give you this section in my charge is, because it violates the fourteenth amendment to the constitution of the United States as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor [fol. 31] deny to any person within its jurisdiction the equal protection of the laws."

And for the further reason that said Code section and section 26-7408 violates the thirteenth amendment to the constitution of the United States as follows: "Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly con-

victed, shall exist within the United States, or any place subject to their jurisdiction."

T. T. Purdom, Victor Davidson, W. I. Allen.

Refused to charge said request, this April 29th, 1940.
J. B. Jackson, J. S. C., O. C.

[fol. 32] In Superior Court of Wilkinson County

[Title omitted]

Amended Motion for a New Trial

Now comes Ira Taylor, movant, in the original motion for a new trial filed in the above case, with leave of the court, and amends his original motion for a new trial by adding the following grounds, to wit:

Ground No. 1

Because the court erred in charging the jury as follows, to wit:

Gentlemen of the jury, this man is indicted under the following section of the Criminal Code of Georgia, which is section 715:

"If any person shall contract with another to perform for him services of any kind, with intent to procure money or other things of value thereby, and not perform the services contracted for, to the loss and damage of the hirer, or, after having so contracted, shall procure from the hirer money, or other things of value, with intent not to perform such services, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor."

Movant avers that said charge was erroneous and not sound as an abstract principle of law.

Movant avers that it was also erroneous for the following reason: (a) Said statute is repugnant to and violates article one, section one, paragraph two of the constitution of the State of Georgia (Section 2-102 of the 1933 Code of Georgia) as follows: Protection to person and property is the paramount duty of government, and shall be im-

[fol. 33] partial and complete." (b) It was error for the court to charge section 26-7408 (715 P. C.) quoted above as it is unconstitutional violating article 1, section 1, paragraph 2, of the constitution of the State of Georgia.

3. Movant avers that it was also erroneous for the following reasons: (a) said charge was error because the statute is repugnant to and violates article one, section one, paragraph seventeen of the constitution of the State of Georgia (section 2-117 of the Code of 1933, Georgia) as follows, to wit: "There shall be within the State of Georgia neither slavery nor involuntary servitude, save as a punishment for crime after legal conviction thereof." (b) It was error for the court to charge section 26-7408 quoted above (715 P. C.) of the 1933 Code of Georgia as it is unconstitutional violating article 1, section 1, paragraph 17 of the constitution of the State of Georgia, quoted above. (c) Movant avers that the evidence in the case shows that the prosecutor had the defendant indicted to force him by indirection into involuntary servitude and slavery, and to force the said defendant to work against his will for the prosecutor.

4. Movant avers that it was also erroneous for the following reason: (a) Said statute is repugnant to and violates article one, section one, paragraph twenty-one of the constitution of the State of Georgia (section 2-121 of the 1933 Code of Georgia) as follows, to wit: "There shall be no imprisonment for debt."

(b) It was error for the court to charge section 26-7408 (715 P. C.) of the 1933 Code of Georgia, quoted above, as it is unconstitutional violating article 1, section 1, paragraph 21, of the constitution of Georgia, quoted above.

(c) Movant avers that the evidence shows that to sustain a conviction in the case at bar based on this charge of the court will be to imprison the defendant for debt, as punishment for a crime created by an unconstitutional statute.

[fol. 34] Ground 2

Because the court erred in charging the jury as follows: "Now, gentlemen of the jury, paragraph 716 of the Criminal Code of Georgia reads as follows: "Satisfactory proof of a contract, the procuring thereon of money or other

things of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section."

1. Movant avers that said charge was erroneous and not sound as an abstract principle of law.

2. Movant avers that it was also erroneous for the following reason: (a) Said statute is repugnant to and violates article one, section one, paragraph three of the constitution of the State of Georgia (section 2-103 of the 1933 Code of Georgia) as follows, to wit: "No person shall be deprived of life, liberty, or property, except by due process of law."

(b) It was error for the court to charge section 26-7409 of the 1933 Code of Georgia as it is unconstitutional violating article 1, section 1, paragraph 3, of the constitution of the State of Georgia.

Ground 3

Because the court erred in charging the jury as follows, to wit: "Gentlemen of the jury, I charge you the burden is upon the State to show affirmatively that the accused failed to perform the services contracted for, if they show a contract, and failed to return the money advanced on the strength of the contract. The State must prove that there was no good reason why contract was not performed, or no good reason why accused did not return the money advanced to him on the strength of the contract. The State [fol. 35] of Georgia must show that the accused failed to perform the contract and in failing to perform the contract, the defendant did so without good and sufficient cause."

1. Movant avers that said charge was erroneous and not sound as an abstract principle of law.

2. Movant avers that it was also erroneous for the following reason: (a) Said statute is repugnant to and violates, and is unconstitutional because it violates article one, section one, paragraph two of the constitution of the State of Georgia, as follows, to wit: Protection to person and property is the paramount duty of government, and shall be impartial and complete."

3. Movant avers that it was also erroneous for the following reason: (a) Said statute is repugnant to and violates, and is unconstitutional because it violates article one, section one, paragraph three of the constitution of the State of Georgia, as follows, to wit: "No person shall be deprived of life, liberty, or property, except by due process of law."

4. Movant avers that it was also erroneous for the following reasons: (a) Said statute is repugnant to and violates, and is unconstitutional because it violates, article one, section one, paragraph seventeen of the constitution of the State of Georgia, as follows, to wit: "There shall be within the State of Georgia neither slavery nor involuntary servitude, save as a punishment for crime after legal conviction thereof."

5. Movant avers that it was also erroneous for the following reason: (a) Said statute is repugnant to and violates, and is unconstitutional because it violates article one, section one, paragraph twenty-one of the constitution of the State of Georgia, as follows, to wit: "There shall be no imprisonment for debt."

[fol. 36] Ground 4

Because the court erred in charging the jury as follows, to wit: "Gentlemen of the jury, this man is indicted under the following section of the Criminal Code of Georgia, which is section 715: If any person shall contract with another to perform for him services of any kind, with intent to procure money or other things of value thereby, and not perform the services contracted for, to the loss and damage of the hirer, or, after having so contracted, shall procure from the hirer money, or other things of value, with intent not to perform such services, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor.

"Now, gentlemen of the jury, paragraph 716 of the Criminal Code of Georgia reads as follows: Satisfactory proof of a contract, the procuring thereon of money or other things of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to

the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section.'

"Gentlemen of the jury, I charge you the burden is upon the State to show affirmatively that the accused failed to perform the services contracted for, if they show a contract, and failed to return the money advanced on the strength of the contract. The State must prove that there was no good reason why contract was not performed, or no good reason why accused did not return the money advanced to him on the strength of the contract. The State of Georgia must show that the accused failed to perform the contract and in failing to perform the contract, the defendant did so without good and sufficient cause."

[fol. 37] 1. Movant avers that said charge was erroneous and not sound as an abstract principle of law.

2. Movant avers that it was also erroneous for the following reason:

(a) Said statute is repugnant to and violates, and is unconstitutional because it violates, article one, section one, paragraph two of the constitution of the State of Georgia as follows, to wit: "Protection to person and property is the paramount duty of government, and shall be impartial and complete."

(b) Said statute is repugnant to and violates, and is unconstitutional because it violates, article one, section one, paragraph three of the constitution of the State of Georgia as follows, to wit: "No person shall be deprived of life, liberty, or property, except by due process of law."

(c) Said statute is repugnant to and violates, and is unconstitutional because it violates article one, section one, paragraph seventeen of the constitution of Georgia, as follows, to wit: "There shall be within the State of Georgia neither slavery nor involuntary servitude, save as a punishment for crime after legal conviction thereof."

(d) Said statute is repugnant to and violates, and is unconstitutional because it violates article one, section one, paragraph twenty-one of the constitution of the State of Georgia as follows: "There shall be no imprisonment for debt."

Ground 5

Because the court erred in charging the jury as follows, to wit: "Now, gentlemen of the jury, paragraph 716 of the

Criminal Code of Georgia reads as follows: "Satisfactory proof of a contract, the procuring thereon of money or other things of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or dam- [fol. 38] age to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section."

1. Said charge was erroneous because the presumption created by the statute is so unreasonable and arbitrary as to amount to a denial of due process of law in violation of the 14th amendment to the constitution of the United States reading as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of law."

(a) Said statute declaring that proof of one fact or a group of facts shall constitute prima facie evidence of the main or ultimate fact in issue is invalid because there is no rational connection between what is proved and what is to be inferred and constitutes a denial of due process of law, under the 14th amendment quoted above.

(b) Said statute creates a presumption that is unreasonable and that is made conclusive of the rights of the person against whom raised and therefore constitutes a denial of due process of law under the 14th amendment, quoted above.

(c) Said statute creates a presumption that is arbitrary or that operates to deny a fair opportunity to repel it in violation of the due process clause of the 14th amendment quoted above.

(d) Said charge which is a statement by the court of section 26-7409 (716 P. C.) of the 1933 Code of Georgia states an act of the legislature of Georgia which is mere legislative fiat to take the place of fact in the determination of issues involving, life, liberty, or property, and it is not [fol. 39] within the province of the legislature to declare an

individual guilty or presumptively guilty of a crime, and therefore said charge violates the due process clause of the 14th amendment quoted above.

(e) Said charge was further erroneous for the court by charging said section authorized the jury, in absence of evidence to find the defendant guilty under the section and authorized the jury to find that the defendant was presumed to have the intent referred to in the preceding section which reads as follows, to wit: "26-7408 (715 P. C.). Any person who shall contract with another to perform for him services of any kind, with intent to procure money or other thing of value thereby, and not to perform the service contracted for, to the loss and damage of the hirer, or, after having so contracted, shall procure from the hirer money, or other thing of value, with intent not to perform such service, to the loss and damage of the hirer, shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor," and the court necessarily permitted the presumption to be considered and weighed as evidence against the defendant's statement tending affirmatively to prove such acts and conduct was not criminal, in any respect. And said charge further instructed the jury that the State was relieved of the necessity of making out a case against the defendant under section 26-7408 of the Code of Georgia and that the presumption charged could be considered as evidence by the jury and that the burden was on the defendant to prove that he was not guilty after the court had permitted the unreasonable presumption to be considered and weighed as evidence for the State. Said charge thereby created a presumption that is unreasonable and arbitrary and which violates the due process clause of the 14th amendment to the constitution of the United States, heretofore quoted.

[fol. 40] (f) Said charge was further erroneous because the connection between the facts proved by the State and that presumed by the statute is not sufficient. Reasoning does not lead from one to the other. Wherefore said charge violated the due process clause of the 14th amendment to the constitution of the United States, above quoted.

(g) Said charge was further erroneous because the statute operates to deny the defendant a fair opportunity to repel the presumption created by the statute which is in

violation of the due process clause of the 14th amendment to the constitution of the United States.

Ground 6

Because the court erred in charging the jury as follows, to wit: "Gentlemen of the jury, this man is indicted under the following section of the Criminal Code of Georgia, which is section 715: 'If any person shall contract with another to perform for him service of any kind, with intent to procure money or other things of value thereby, and not perform the services contracted for, to the loss and damage of the hirer, or after having so contracted, shall procure from the hirer money, or other things of value, with intent not to perform such service, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor.'

"Now, gentlemen of the jury, paragraph 716 of the Criminal Code of Georgia reads as follows: 'Satisfactory proof of a contract, the procuring thereon of money or other things of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section.' "

[fol. 41] Said charge was erroneous because the statute is unconstitutional, illegal and void in that the same is in violation of the 13th amendment of the constitution of the United States, reading as follows: Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this article by appropriate legislation."

Under said charge it is sufficient for a conviction for the prosecution to show simply that the accused had made the contract in question, had not completely fulfilled it, had refused to return the money or to perform the labor

without good and sufficient cause, without otherwise showing fraudulent intent on the part of the accused.

In so far as the refusal without just cause to perform the labor called for, or to return the money is made prima facie evidence of an intent to defraud, by its necessary operation and evidence of an intent to defraud, by its necessary operation and obvious effect, the fundamental purpose of the charge is to compel under the sanction of the criminal law, enforcement of the contract for personal services, and its natural and inevitable effect is to expose to conviction for crime those who simply fail or refuse to perform contracts for personal services is liquidation of a debt, and thus seeks to provide the means of compulsion through which performance of such service may be secured.

There is no rational connection between the fact of failing to complete the service or to return the money and the presumption of fraudulent intent, and such a presumption is arbitrary, unreasonable and offends against the prohibition of the 13th amendment of the Federal constitution against involuntary servitude except as punishment for [fol. 42] crime. It also offends against said constitutional prohibition by attempting to do indirectly by the creation of a statutory presumption something that it could not do by direct enactment. Wherefore, said charge is erroneous and illegal.

Ground 7

Because the court erred in charging the jury as follows, to wit: "Gentlemen of the jury, this man is indicted under the following section 715: 'If any person shall contract with another to perform for him services of any kind, with intent to procure money or other things of value thereby, and not perform the services contracted for, to the loss and damage of the hirer, or, after having so contracted, shall procure from the hirer money, or other things of value, with intent not to perform such services, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor.'

"Now, gentlemen of the jury, paragraph 716 of the Criminal Code of Georgia reads as follows: 'Satisfactory proof of a contract, the procuring thereon of money or other things of value, the failure to perform the services so contracted for, or failure to return the money so advanced

with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section.' "

Said charge was erroneous because it is unconstitutional, illegal and void and is in violation of an act of Congress of March 2, 1867 (8 U. S. C. A. sec. 56), reading as follows:

"The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in the territory of New Mexico, or in any other territory or State of the United States; and all acts, laws, [fol. 43] resolutions, orders, regulations, or usages of the territory of New Mexico, or of any other territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void."

While the State may impose involuntary servitude as punishment for crime, it may not compel one man to labor for another in payment of a debt, by punishing him as a criminal if he does not perform the service or pay the debt. Since it cannot punish the servant as a criminal for a mere failure or refusal to serve without paying his debt, it is not permitted to accomplish the same result by creating a statutory presumption which upon proof of no other fact, exposes him to conviction and punishment.

Ground 8

Because the court erred in charging the jury as follows:

"Gentlemen of the jury, this man is indicted under the following section of the Criminal Code of Georgia, which is section 715: 'If any person shall contract with another to perform for him services of any kind, with intent to procure money or other things of value thereby, and not perform the services contracted for, to the loss and damage of the hirer, or after having so contracted, shall procure from the hirer money, or other things of value, with intent not to perform such service, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor.'

"Now, gentlemen of the jury, paragraph 716 of the Criminal Code of Georgia reads as follows: "Satisfactory proof [fol. 44] of a contract, the procuring thereon of money or other things of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section."

Said charge was erroneous because the statute is unconstitutional and void for the reason that section 716, quoted above (section 26-7409 of the Code of 1933, Georgia) created a presumption that is so unreasonable and arbitrary as to amount to a denial of due process of law in violation of the 14th amendment to the constitution of the United States reading as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. Said charge quoting section 716 P. C. (section 26-7409) was further erroneous because the statute, sec. 26-7409, quoted above, is unconstitutional in that it operates to deny the defendant a fair opportunity to repel it and therefore violates the due process clause of the 14th amendment, said amendment set out above.

3. Said charge is further erroneous for the further reason that said section 716 P. C. (26-7409 Code of 1933) is unconstitutional and violates the 14th amendment to the constitution of the United States because it is not within the province of the legislature for the State of Georgia to declare an individual guilty or presumptively guilty of crime, and [fol. 45] for the further reason that the connection between the facts alleged and those presumed by this statute is not sufficient to charge the accused with a criminal offense as reasoning does not lead from one to the other.

4. Said charge is further erroneous for the reason that charge quotes the act of 1903, pages 90 and 91, Georgia Laws, which act was codified in the Penal Code of Georgia

as two sections, to wit: sections 715 and 716, and which is now codified in the 1933 Code of Georgia as two Code sections, to wit: sections 26-7408 and 26-7409, and said act being and is unconstitutional and void for the reasons that the presumptions created by it are so unreasonable and arbitrary as to amount to a denial of due process of law, and that it operates to deny the defendant a fair opportunity to repel it, and that it is not within the province of the legislature of the State of Georgia to declare an individual guilty or presumptively guilty of crime, all of which violates the 14th amendment to the constitution of the United States, quoted above."

Ground 9

Because the court erred in charging the jury as follows:

"Gentlemen of the jury, I charge you the burden is upon the State to show affirmatively that the accused failed to perform the services contracted for, if they show a contract, and failed to return the money advanced on the strength of the contract, the State must prove that there was no good reason why contract was not performed, or no good reason why accused did not return the money advanced to him on the strength of the contract. The State of Georgia must show that the accused failed to perform the contract and in failing to perform the contract, the defendant did so without good and sufficient cause."

[fol. 46] 1. Said charge is erroneous because said statute is illegal, unconstitutional, and void and violates the 13th amendment of the constitution of the United States, reading as follows: "Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

"Section 2. Congress shall have power to enforce this article by appropriate legislation."

Said charge is further erroneous because the said statute is in violation of an act of Congress of March 2, 1867 (8 U. S. C. A. sec 56), reading as follows: "The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in the territory of New Mexico, or in any other territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of the territory or State, which have heretofore established, maintained, or enforced, or by virtue

of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void."

Said charge is further erroneous because said statute violates the 14th amendment of the constitution of the United States reading as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

[fol. 47] Wherefore, said charge is illegal, and erroneous.

Ground 10

Because the court erred in refusing the following request to charge: Gentlemen of the jury, I will not charge you section 26-7409 of the Penal Code of Georgia which reads as follows: "Satisfactory proof of the contract, the procuring thereon of money or other things of value, the failure to perform the services so contracted for, or failure to return the money, so advanced, with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section "The reason I refuse to give you this section in my charge is, because it violates the fourteenth amendment to the constitution of the United States as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." And for the further reason that said Code section and section 26-7408 violates the thirteenth amendment to the constitution of the United States as follows: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the

party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Said charge being pertinent and applicable to the facts of the case, and movant having submitted such request to charge in writing before the jury retired to consider their verdict.

[fol. 48] (a) That said written request was accurate and sound as a proposition of law.

(b) That the request was not covered or substantially covered by the general charge.

(c) That the indictment was predicated on section 26-7408 of the Code of Georgia reading as follows:

"If any person shall contract with another to perform for him services of any kind, with intent to procure money or other things of value thereby, and not perform the services contracted for, to the loss and damage of the hirer, or, after having so contracted, shall procure from the hirer money, or other things of value with intent not to perform such services, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor," and section 26-7409 of the Code of Georgia, quoted above. The evidence introduced by the State was for the purpose of making out a case under sections 26-7408 and 26-7409 of the 1933 Code of Georgia, and the failure and refusal of the Court to give the above set forth charge misled the jury and led the jury to believe that they could find the defendant guilty of a crime based on void, illegal, and unconstitutional statutes, to wit: sections 26-7408 and 26-7409. Whereas, if said requested charge had been given by the court the jury would have known that said sections of the Georgia Code were unconstitutional, void and illegal, and that as a result thereof the defendant could not be convicted under the evidence introduced at the trial of the case.

Said refusal to charge was erroneous because the statute under which the defendant was indicted was arbitrary, unreasonable, null and void and in violation of the 14th amendment of the constitution of the United States and of article 1, section 1, paragraph 3 (Code of Georgia 2-103) in that it creates a presumption of fraudulent intent on the part of the defendant by mere proof of a violation of a simple con-
[fol. 49] tract without affording the defendant a fair opportunity to repel said presumption of fraudulent intent.

The defendant was helpless in that the laws of Georgia did not permit him to testify under oath that he did not intend to injure or defraud his employer. Thus the defendant stood stripped by the statute and by the charge of the court of the presumption of innocence and was convicted as a common cheat and swindler merely upon evidence of a simple breach of contract. The defendant was thus precluded from the right to present his defense to the main fact thus presumed by the statute, and in that respect the statute failed to afford him a reasonable opportunity to submit to the jury in his defense all of the facts bearing upon the issue and thus fails to provide him equal protection and due process of law as required by the Federal and State constitutions.

Wherefore, movant prays that these his grounds for new trial be inquired of by the court, and that a new trial be granted him.

T. T. Purdom, Attorney for Defendant, Ira Taylor.
P. O. Box No. 12, Sparta, Ga.

The recital of facts contained in the foregoing amended motion for new trial are hereby approved as true and correct. Let the same be filed as a part of the record.

This 22nd day of July, 1940.

J. B. Jackson, Judge Superior Court Ocmulgee Circuit.

[fol. 50] Service of the within amended motion for new trial is hereby acknowledged. Copy and all other and further service or notice waived.

This 22nd day of July, 1940.

C. S. Baldwin, Jr., Solicitor-General.

IN SUPERIOR COURT OF WILKINSON COUNTY

ORDER OVERRULING MOTION FOR NEW TRIAL

This motion for new trial coming on regularly to be heard, after hearing argument, it is considered, ordered and adjudged that a new trial be and the same is hereby denied.

This 22nd day of July, 1940.

J. B. Jackson, Judge Superior Court Ocmulgee Circuit.

Pauper affidavit omitted in printing.

[fols. 51-52] Notice of appeal omitted in printing.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 53] IN SUPREME COURT OF GEORGIA

No. 13498

TAYLOR

v.

THE STATE

By the COURT:

1. The act approved August 15, 1903 (Ga. L. 1903, p. 90), entitled, "An act to make it illegal for any person to procure money, or other thing of value, on a contract to perform services, with intent to defraud, and to fix the punishment therefor, and for other purposes," is not violative of the 13th amendment to the constitution of the United States (Code, § 1-813), or of article 1, section 1, paragraph 17, of the constitution of Georgia (Code, § 2-117), prohibiting slavery or involuntary servitude except as punishment for crime. Nor is the act violative of the provisions forbidding peonage, found in the United States Revised Statutes, §§ 1990, 5526 (8 U. S. C. A. 56), enacted to secure the enforcement of such amendment. Latson v. Wells, 136 Ga. 681 (71 S. E. 1052); Wilson v. State, 138 Ga. 489; Townsend v. State, 124 Ga. 69 (75 S. E. 619).

2. The act approved August 15, 1903 (Ga. L. 1903, p. 90), is not violative of the due-process clause and the equal-protection clause of the 14th amendment to the constitution of the United States (Code, § 1-815), or of article 1, section 1, paragraphs 2 and 3, of the constitution of Georgia (Code, §§ 2-102, 2-103). See Vance v. State, 128 Ga. 661 (57 S. E. 889).

3. Nor is the said statute violative of article 1, section 1, paragraph 21, of the constitution of Georgia (Code, § 2-121), prohibiting imprisonment for debt. Lamar v. State, 120 Ga. 312 (47 S. E. 958); Lamar v. Prosser, 121 Ga. 153 (6) (48 S. E. 977); Banks v. State, 124 Ga. 15 (4) (52 S. E. 74, 2 L. R. A. (N. S.) 1007).

[fol. 54] 4. It follows the court did not err in charging the jury in the terms of the statute, or in refusing defendant's

request to charge that the statute was unconstitutional and void.

(a) The request to overrule Lamar v. State, Lamar v. Prosser, Banks v. State, Townsend v. State, Vance v. State, Latson v. Wells, and Wilson v. State, is denied.

(b) The decisions in Bailey v. Alabama, 219 U. S. 219, Manley v. Georgia, 279 U. S. 1, and Western & Atlantic R. Co. v. Henderson, 279 U. S. 639, do not require a different result. See Wilson v. State, supra.

5. In this case a copy of a pauper affidavit was transmitted with the record to the Supreme Court. The affidavit was as follows:

"State of Georgia v. Ira Taylor. Appeal from verdict of guilty to a misdemeanor. Superior Court Wilkinson County, Ga.

"Personally appeared before the undersigned Ira Taylor, defendant, who on oath says that he is unable to pay the costs, because of his poverty, in said case. Ira his (X) mark Taylor. Defendant, Ira Taylor.

"Sworn to and subscribed to before me this 23rd day of May, 1940. W. E. Boyer, N. P. Ex of. J. P."

Held: (a) It will be presumed from the recitals on the face of the affidavit that it was executed in a county in Georgia where the person before whom it was taken was a notary public and ex-officio justice of the peace authorized to administer the oath. Abrams v. State, 121 Ga. 170 (3) (48 S. E. 965); Stidham v. Tanner Grocery Co., 47 Ga. App. 114 (169 S. E. 759).

(b) In Abrams v. State, supra, the officer who administered the oath was an officer commissioned by the Governor, and was of the same character as the officer in the present case. In Dawson v. Dawson, 106 Ga. 45 (2) (32 S. E. 29), the attesting officer was a mere commercial notary [fol. 55] public, who was not required to be commissioned by the Governor. If this would not afford basis for a distinction, the decision in that case, having been concurred in by only four Justices, would yield to Abrams v. State, supra, concurred in by all the Justices.

(c) The affidavit was sufficient to relieve the plaintiff in error or his attorney from the payment of costs in bringing the case to the Supreme Court.

6. In view of the fact that the defendant relies solely on constitutional grounds, it is unnecessary to rule upon the sufficiency of the evidence to support the verdict.

Judgment affirmed. All the Justices concur.

OPINION—March 13, 1941

ATKINSON, Presiding Justice:

Ira Taylor was indicted for violation of the act of 1903 (Ga. L. 1903, pp. 90, 91; Code, §§ 26-7408, 26-7409), as follows: "Any person who shall contract with another to perform for him services of any kind, with intent to procure money or other thing of value thereby, and not to perform the service contracted for, to the loss and damage of the hirer, or, after having so contracted, shall procure from the hirer money, or other thing of value, with intent not to perform such service, to the loss and damage of the hirer, shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor. * * * Satisfactory proof of the contract, the procuring thereon of money or other thing of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section." The defendant interposed a demurrer on [fol. 56] the grounds that the statute violates (a) the 13th amendment to the constitution of the United States, which prohibits slavery or involuntary servitude, except as punishment for crime (Code, § 1-813); (b) an act of Congress of March 2, 1867, prohibiting peonage within the several States (8 U. S. C. A. 56); (c) the due-process clause and the equal-protection clause of the 14th amendment of the constitution of the United States (Code, § 1-815). Exceptions pendente lite to an order overruling the demurrer were filed. On the trial the judge charged the jury in the language of the statute, and refused the defendant's request for instruction based on the alleged unconstitutionality of the statute. A verdict was returned, the jury finding the defendant guilty. The defendant filed a motion for

new trial, and a motion in arrest of judgment. In addition to the constitutional grounds set out in the demurrer, the motion in arrest of judgment charged that the statute was violative of the provisions of the constitution of Georgia which prohibit slavery or involuntary servitude except as punishment for crime; also the provision of the constitution prohibiting imprisonment for debt; and the equal-protection and due-process clauses. The exception is to an order overruling the motion in arrest, and to the denial of a new trial. Error was also assigned on the exceptions pendente lite. In the brief of the attorney for the plaintiff in error it is stated: "Inasmuch as the defendant in seeking to set aside his conviction relies solely on constitutional grounds, the evidence set out in the record is material only in so far as it relates to these grounds."

[fol. 57] IN SUPREME COURT OF GEORGIA

IRA TAYLOR

v.

THE STATE

JUDGMENT—March 13, 1941

This case came before this court upon a writ of error from the superior court of Wilkinson county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur.

[fol. 58] IN SUPREME COURT OF GEORGIA

No. 13498

IRA TAYLOR, Appellant,

vs.

THE STATE OF GEORGIA, Appellee

PETITION FOR APPEAL—Filed April 8, 1941

To the Honorable Supreme Court of the State of Georgia:

Considering himself aggrieved by the final decision of the Supreme Court of Georgia in the above entitled cause,

the Appellant herein, Ira Taylor, hereby prays that an Appeal be allowed to the Supreme Court of the United States, and for an order fixing the amount of the Bond as security for costs therein, and for an order approving the Bond.

Assignments of Error

And the said Appellant, Ira Taylor, assigns the following errors in the Record and proceedings in the said case:

(1) The Supreme Court of Georgia erred in holding that the Act of August 15, 1903 (Georgia Laws 1903, page 90) is not violative of the 13th Amendment to the Constitution of the United States which prohibits slavery or involuntary servitude except as punishment for crime, nor violative of the Act of Congress forbidding peonage found in the United States Revised Statutes, Section 1990, 5526 (8 U. S. C. A. 56), enacted to secure the enforcement of the 13th Amendment to the Constitution of the United States.

(2) The Supreme Court of Georgia erred in holding that the Act of August 15, 1903 (Georgia Laws 1903, page 90) is not violative of the Due Process and Equal Protection [fol. 59] Clauses of the 14th Amendment to the Constitution of the United States.

(3) The Supreme Court of Georgia erred in holding that the Act of August 15, 1903 (Georgia Laws 1903, page 90) is not violative of the 13th Amendment to the Constitution of the United States nor of the Act of Congress forbidding peonage found in United States Revised Statutes, Section 1990, 5526 (8 U. S. C. A. 56), because, in so far as the refusal, without good and sufficient cause, to perform the labor contracted for, or to return the money advanced under the contract, is made by the Statute presumptive evidence of an intent to defraud, the purpose, operation and effect of the Statute is to compel a man to labor for another in payment of a debt, thus compelling under the sanction of the criminal law the enforcement of a contract for personal service, and exposing the accused to conviction and punishment for crime merely upon proof of a breach of contract for personal service in liquidation of a debt.

(4) The Supreme Court of Georgia erred in holding that the Act approved August 15, 1903 (Georgia Laws 1903, page 90) is not violative of the Due Process Clause of the 14th

Amendment to the Constitution of the United States, because in so far as the refusal without good and sufficient cause to perform the labor contracted for or to return the money, is made by the Statute presumptive evidence of an intent to defraud, the presumption is unreasonable and arbitrary in that the failure to return the money or to complete the labor bears no logical relation to the fact presumed, and points to no specific act or omission on the part of the accused tending to show any fraudulent intent, and operates to deny to the accused a fair opportunity to repel it, the [fol. 60] presumption of guilt being made by the Statute sufficient to outweigh the presumption of innocence, and putting the burden on the accused to negative or explain away every fact which might tend to show his fraudulent intent, especially since under the laws of Georgia the accused may not for the purpose of rebutting the statutory presumption testify as a witness under oath.

(5) The Supreme Court of Georgia erred in holding that the Act approved August 15, 1903 (Georgia Laws 1903, page 90) is not violative of the due process clause of the 14th Amendment to the Constitution of the United States, because the Statute is too vague and indefinite to provide a sufficiently ascertainable standard of guilt, the Statute failing to define what is meant by "good and sufficient cause" but leaves the standard of guilt to be fixed by the whims or idiosyncracies of courts or juries rather than by the terms of the Statute itself and fails to give to the accused sufficient information as to the nature and cause of the accusation.

(6) The Supreme Court of Georgia erred in holding that the Act of August 15, 1903 (Georgia Laws 1903, page 90) is not violative of the Equal Protection Clause of the 14th Amendment to the Constitution of the United States because it provides an unlawful discrimination against the laboring class and confers a special privilege or immunity on all other persons including the employer, no penalty being provided by the Statute for breach of the contract by the employer.

(7) The Supreme Court of Georgia erred in holding that the trial Court did not err in charging the jury in terms of the Act of August 15, 1903 (Georgia Laws 1903, page 90) [fol. 61] and in refusing Appellant's Request to Charge that said Act is repugnant to the 13th and 14th Amendments

to the Constitution of the United States and to the Act of Congress forbidding peonage found in United States Revised Statutes, Section 1990, 5526 (8 U. S. C. A. 56), enacted to secure the enforcement of the 13th Amendment to the Constitution of the United States.

(8) The Supreme Court of Georgia erred in affirming the judgment of the Superior Court of Wilkinson County, Georgia, convicting the Appellant of violating the Act of August 15, 1903 (Georgia Laws 1903, page 90) as against the Appellant's contention that the said Act is repugnant to the 13th and 14th Amendments to the Constitution of the United States and to the provisions of the Act of Congress forbidding peonage found in United States Revised Statutes, Section 1990, 5526 (8 U. S. C. A. 56), enacted to secure the enforcement of the 13th Amendment to the Constitution of the United States.

PRAYER FOR REVERSAL

For which errors, the Appellant, Ira Taylor, prays that the said Judgment of the Supreme Court of the State of Georgia, dated March 13, 1941, be reversed and a judgment rendered in favor of said Appellant setting aside his conviction, releasing him from custody and for all other proper relief.

Leonard Haas, Thomas Taylor Purdom, Attorneys for Appellant, Ira Taylor.

Haas, Gardner, Lyons & Hurt, Of Counsel.

[File endorsement omitted.]

[fol. 62] IN SUPREME COURT OF GEORGIA

[Title omitted]

ORDER ALLOWING APPEAL—Filed April 8, 1941

The Appellant, Ira Taylor, in the above entitled cause having prayed for an Appeal to the Supreme Court of the United States from a judgment rendered in said cause by the Supreme Court of the State of Georgia on March 13, 1941, and having presented and filed his Petition for Appeal, Assignments of Error, Statement of Jurisdiction, and

Prayer for Reversal, pursuant to the Statutes and Rules of the Supreme Court of the United States in such case made and provided,

It Is Hereby Ordered that an Appeal be and the same is hereby allowed to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Georgia in the above entitled cause, as provided by law, and It Is Further Ordered that the Clerk of the Supreme Court of the State of Georgia shall prepare and certify a transcript of the Record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within forty (40) days from this date.

It Is Further Ordered that the mandate of this Court be withheld and be not returned to the trial court until ten (10) days after the final decision on this Appeal by the Supreme Court of the United States.

It Is Further Ordered that security costs be fixed in the sum of Five Hundred Dollars ($500.00) and that the Appeal Bond presented herewith be, and the same hereby is, approved.

[fol. 63] This 8th day of April, 1941.

Chas. S. Reid, Chief Justice of the Supreme Court of the State of Georgia.

[File endorsement omitted.]

[fols. 64–81] Citation, in usual form, showing service on Ellis Arnall et al., filed April 8, 1941, omitted in printing.

[fols. 82–85] Bond on appeal for $500.00, approved and filed April 8, 1941, omitted in printing.

[fol. 86] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 87] In Supreme Court of the United States

Statement of Points to Be Relied Upon and Designation of Parts of Record to Be Printed—Filed May 5, 1941

Comes now Ira Taylor, the Appellant in the above entitled cause, and states that the points upon which he intends to rely in this case in this Court are as follows:

Point 1. The Statute of the State of Georgia, to-wit the Act of August 15, 1903 (Georgia Laws 1903, page 90) is

unconstitutional and void in that it is violative of the 13th Amendment to the Constitution of the United States which prohibits slavery or involuntary servitude except as punishment for crime, and of the Act of Congress forbidding peonage found in the United States Revised Statutes Section 1990, 5526 (8 U. S. C. A. 56) enacted to secure the enforcement of the 13th Amendment to the Constitution of the United States.

Point 2. The said Statute of the State of Georgia is unconstitutional and void in that it is violative of the Due Process and Equal Protection Clauses of the 14th Amendment to the Constitution of the United States.

Point 3. The Supreme Court of the State of Georgia erred in ruling that the aforesaid Statute was a valid and constitutional regulation.

Point 4. The case is controlled by the decision of this Court in Bailey v. Alabama, 219 U. S. 219.

[fol. 88] The parts of the Record which Appellant thinks necessary for a consideration of the Points relied upon are as follows:

(1) The indictment (R. page 7);

(2) Demurrer to the indictment (R. page 9) and Order of the trial Court overruling the Demurrer (R. page 13), and Exceptions pendente lite filed with reference thereto (R. page 15);

(3) Charge of the Court (R. page 25) and Defendant's Request to Charge (R. page 30);

(4) Verdict and sentence (R. page 16);

(5) Amended Motion for New Trial (R. page 32) and Order overruling the same (R. page 50);

(6) Brief of the Evidence (R. page 17);

(7) Bill of Exceptions (R. page 1);

(8) The decision of the Supreme Court of Georgia (R. page 53) and statement of the case as set out therein.

(9) The Petition for Appeal (R. page 58), the Order allowing the same (R. page 62), Citation and Acknowledgment of Service thereon (R. page 64);

(10) Appellant's Statement of Jurisdiction (R. page 65);

(11) Appellant's Notice and Statement directing attention to the provisions of Paragraph 3 Rule 12 (R. page 80);

(12) Appellant's Bond (R. page 82).

[fol. 89] (Attached hereto is a list of duplications appearing in the Record.)

Respectfully submitted, Leonard Haas, Thomas Taylor Purdom, Attorneys for Appellant.

Haas, Gardner, Lyons & Hurt, of Counsel.

Due and legal service of the foregoing Statement of Points, and of the parts of the Record relied on is hereby acknowledged.

This 1st day of May, 1941.

The State of Georgia, by Emil J. Clower, Asst. Attorney-General of the State of Georgia; C. S. Baldwin, Jr., Solicitor General of the Ocmulgee Circuit.

[fol. 90] Appendix "A"

Duplications in the Record

The following repetitions and duplications occur in the Record:

(1) The Statute of the State of Georgia, to-wit, the Act of August 15, 1903 (Penal Code 715-716) is set out on pages 14, 27-28, and 66;

(2) The Opinion of the Supreme Court of Georgia is set out in full on pages 53-56 and 76-79.

[fol. 91] [File endorsement omitted.]

Endorsed on cover: In forma pauperis. File No. 45,367. Georgia Supreme Court. Term No. 70. Ira Taylor, appellant, vs. The State of Georgia. Filed May 5, 1941. Term No. 70, O. T., 1941.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 70

IRA TAYLOR,

Appellant,

vs.

THE STATE OF GEORGIA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

STATEMENT AS TO JURISDICTION.

LEONARD HAAS,
THOMAS TAYLOR PURDOM,
Counsel for Appellant.

HAAS, GARDNER, LYONS & HURT,
Of Counsel.

INDEX.

Subject Index.

Table of Cases Cited.

Statutes Cited.

IN THE SUPREME COURT OF GEORGIA

No. 13498

IRA TAYLOR,

Appellant,

vs.

THE STATE OF GEORGIA,

Appellee.

STATEMENT AS TO JURISDICTION.

In compliance with Paragraph 1 of Rule 12 of the Rules of the Supreme Court of the United States, the appellant submits herewith his Statement upon which it is contended that the Supreme Court of the United States has jurisdiction upon Appeal to review the judgment in the above entitled cause.

Opinion Below.

The opinion of the Supreme Court of Georgia has not yet been officially reported. It appears at Pages 53-57 of the Record and a copy thereof is appended hereto. No opinion was written by the trial court.

Jurisdiction.

This Court has jurisdiction under Section 237 (a) of the Judicial Code as amended by the Acts of February 13, 1925, January 31, 1928, and April 26, 1928 (28 U. S. C. A. Section

344a) to review the judgment of the court below upon appeal.

I.

The Appeal is Timely.

The judgment of the Supreme Court of Georgia was entered on the 13th day of March, 1941. The Petition for the allowance of an Appeal was presented to the Honorable Charles S. Reid, Chief Justice of the Supreme Court of the State of Georgia on the 8th day of April, 1941, and was allowed by him on said date (R. 62).

II.

The validity of a State statute under the Federal Constitution was drawn into question and the decision was in favor of its validity.

A.

THE STATUTE.

The statute under which the appellant was tried and convicted, and the validity of which is assailed by the appellant, is the Act of August 15, 1903 (Georgia Laws 1903, page 90; Section 26-7408 and 26-7409 Code of 1933) which provides as follows:

> "Section 1. Be it enacted * * * That from and after the passage of this Act if any person shall contract with another to perform for him services of any kind with intent to procure money, or other thing of value thereby, and not to perform the service contracted for, to the loss and damage of the hirer; or after having so contracted, shall procure from the hirer money, or other thing of value, with intent not to perform such service, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as prescribed in section 1039 of the Code.

"Sec. 2. Be it further enacted, That satisfactory proof of the contract, the procuring thereon of money or other thing of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section."

The punishment for a misdemeanor as provided by Section 1039 of the Code of Georgia (Code 27-2506) is as follows:

"Misdemeanors, how punished.—Except where otherwise provided, every crime declared to be a misdemeanor shall be punishable by a fine not to exceed $1,000, imprisonment not to exceed six months, to work in the chain gang on the public roads, or on such other public works as the county or State authorities may employ the chain gang, not to exceed 12 months, any one or more of these punishments in the discretion of the judge * * *."

The Statute, as construed and applied to the Appellant's case, was declared to be valid both by the trial court and by the Supreme Court of Georgia, as against Appellant's contention that it was violative of the 13th and 14th Amendments to the Constitution of the United States and of the Act of Congress forbidding peonage found in the United States Revised Statutes, Section 1990, 5526 (8 U. S. C. A. 56). In affirming Appellant's conviction under the Statute, the Supreme Court of Georgia construed and applied the Statute to the facts of Appellant's case and the decision was in favor of its validity.

B.

Nature of the Case.

The Appellant, a negro, was indicted by the Grand Jury of Wilkinson County, Georgia, for an alleged violation of

the Act of August 15, 1903 (Section 26-7408 and 26-7409 Code of 1933) above set out, the indictment charging the accused with a misdemeanor for that the said accused on the 25th day of March, 1939 "did then and there unlawfully and with force and arms, after having contracted with R. L. Hardie to do manual labor for him at $1.25 per day in helping to build a house on the farm of R. L. Hardie where he then resided in said county, said work to begin when R. L. Hardie called for him to start and to continue until he had worked out the sum of $19.50, did on the strength of said contract procure an advance, on said labor, of $19.50 with intent not to perform same, and did fail and refuse to perform same, without good and sufficient cause, and did fail and refuse to pay the money so advanced back at the time the work was to be performed, to the loss and damage of the hirer" (R. 7).

The Appellant filed his General Demurrer to the indictment on the ground that the Statute under which he was indicted violated the 13th and 14th Amendments to the Constitution of the United States and the provisions of the Act of Congress forbidding peonage, enacted to secure the enforcement of the 13th Amendment, found in the United States Revised Statutes, Section 1990, 5526 (8 U. S. C. A. 56) (R. 9).

The Demurrer charged that the Statute under which Appellant was indicted was violative of the 13th Amendment to the Constitution of the United States and of the Act of Congress forbidding peonage, because in so far as the refusal without good and sufficient cause to perform the service contracted for or to return the money advanced under the contract is made presumptive evidence of an intent to defraud, without otherwise showing any fraudulent intent on the part of the accused, the purpose operation and effect of the Statute is to compel a man to labor for another in payment of a debt, thus compelling under

the sanction of the criminal law the enforcement of a contract for personal service; and that the Statute thus exposed the Appellant to conviction and punishment for a crime merely upon proof of breach of contract for personal service in liquidation of a debt; especially since under the laws of Georgia, the accused may not for the purpose of rebutting the statutory presumption, testify as a witness under oath (R. 9).

The Appellant's Demurrer further charged that the Statute under which Appellant was indicted deprived the Appellant of his liberty without due process of law in violation of Section 1 of the 14th Amendment to the Constitution of the United States, because in so far as the refusal without good and sufficient cause to perform the service or to return the money is made by the Statute presumptive evidence of an intent to defraud, without otherwise showing any fraudulent intent on the part of the accused, the presumption is unreasonable and arbitrary in that the failure to return the money or to complete the labor bears no logical relation to the fact presumed, and points to no specific act or omission on the part of the accused tending to show any fraudulent intent, the presumption of guilt thus being made by Statute sufficient to outweigh the presumption of innocence and putting the burden on the accused to negative or explain away every fact which might tend to show a fraudulent intent on his part, especially since under the laws of Georgia the accused may not for the purpose of rebutting the statutory presumption testify as a witness under oath (R. 11-13).

The Demurrer was overruled by the Court, to which ruling exceptions *pendente lite* were filed as required by State practice, the Defendant entered a plea of not guilty, and the case came on for trial.

In his charge to the jury the Court charged in the language of the Statute (R. 27-28) and refused to charge as

requested by the Appellant that the Statute was unconstitutional and void (R. 30-31). The verdict of guilty was found by the jury and the Court sentenced the Appellant to pay a fine of $35.00 including costs or to work at hard labor on the chain gang for 8 months (R. 16).

The Appellant filed his Amended Motion for New Trial and Motion in Arrest of Judgment based on the same constitutional grounds set up in his General Demurrer to the indictment and the additional ground that the Statute was repugnant to Article 1, Section 1, Paragraph 21 of the Constitution of the State of Georgia (Section 2-121, Code 1933) prohibiting imprisonment for debt (R. 32-49).

The trial court overruled the Motion in Arrest of Judgment and the Amended Motion for New Trial (R. 50) and the Appellant appealed to the Supreme Court of Georgia, his Bill of Exceptions assigning error on the action of the trial court in overruling his Demurrer, Motion in Arrest of Judgment and his Motion for New Trial (R. 1-4).

The Supreme Court of Georgia affirmed the judgment of the lower court, the opinion of the Court stating (a) the Statute is not violative of the 13th Amendment to the Constitution of the United States nor of the Act of Congress forbidding peonage found in United States Revised Statutes 1990, 5526 (8 U. S. C. A. 56); (b) nor is the Statute violative of the Due Process Clause and the Equal Protection Clause of the 14th Amendment to the Constitution of the United States; (c) nor did the Court err in charging the jury in terms of the Statute, nor in refusing Defendant's request to charge that the Statute was unconstitutional and void; (d) the Court refused to overrule its prior decisions holding the Statute valid, and held that the decisions of the Supreme Court of the United States in the cases of *Bailey* v. *Alabama*, 219 U. S. 219: *Manley* v. *State of Georgia*, 279 U. S. 1, and *Western & Atlantic Ry. Co.* v. *Henderson*, 279 U. S. 639, were not controlling (R. 53-56).

C.

THE FEDERAL QUESTIONS WERE PROPERLY RAISED AND WERE DECIDED ADVERSELY TO THE APPELLANT.

The Federal questions were raised by the Appellant in his Demurrer to the indictment (R. 9-13), in Appellant's Objections to the Charge of the Court (R. 30-31), in the Motion in Arrest of Judgment, and in the Motion for New Trial (R. 32-39), and in the Bill of Exceptions taking the case to the Supreme Court of Georgia (R. 1-4), and the Supreme Court of Georgia actually passed on all Federal questions raised in the court below by the Appellant and decided said questions adversely to the Appellant (R. 53-56). Both the trial court and the Supreme Court of Georgia held that the Statute under which the Appellant was indicted and convicted was not violative of any of the constitutional objections raised by the Appellant.

Accordingly, the Supreme Court of the United States has jurisdiction upon Appeal to review the judgment of the Supreme Court of Georgia.

III.

The Appeal is from a final judgment of the highest court of the State of Georgia, the Supreme Court of Georgia.

The judgment directs that the judgment of conviction of the lower court be affirmed (R. 57). It is final both in form and in substance, the Supreme Court of Georgia being the highest court of the State of Georgia.

The Federal Questions Presented Are Substantial.

(1) Whether a State Statute may, without violating the 13th Amendment and the provisions of the Act of Congress forbidding peonage, make criminal a mere breach

of contract for personal service in liquidation of a debt, without proof of any fraud or fraudulent intent on the part of the accused, is a substantial Federal question.

Such a Statute is unconstitutional, illegal and void under the decision of the Supreme Court of the United States in *Bailey* v. *Alabama*, 219 U. S. 219 wherein a similar Statute of the State of Alabama was held to be violative of the 13th Amendment to the Federal Constitution and against the provisions against peonage found in United States Revised Statutes 1990, 5526 (8 U. S. C. A. 56). Though there has been no authoritative determination in any subsequent case that the principle ruled in the *Bailey* case has in any way been altered or abandoned by the Supreme Court of the United States, the Supreme Court of Georgia adhered to its two previous rulings in *Wilson* v. *State*, 138 Ga. 489 and in *Latson* v. *Wells*, 136 Ga. 681, to the effect that the decision of the Federal Supreme Court in *Bailey* v. *Alabama* was not controlling and refused to overrule its previous decisions holding the Statute valid and constitutional (R. 54). The ruling of the Georgia Supreme Court in *Wilson* v. *State*, *supra*, is condemned in the note appended to 8 U. S. C. A. Section 56 at page 66. See also *United States* v. *Reynolds*, 235 U. S. 133.

(2) The Appellant further charges that the Statute under which he was indicted and convicted deprived him of his liberty without due process of law in that the presumption of fraudulent intent raised by the Statute is unreasonable and arbitrary and operates to deny the accused a fair opportunity to repel it in that the failure to return the money or to perform the labor bears no logical relation to the fact presumed, namely fraudulent intent, and points to no specific act or omission on the part of the accused tending to show any fraudulent intent. The presumption of guilt raised by the Statute is thus made sufficient to

outweigh the presumption of innocence and puts the burden on the accused to negative or explain away every fact which might tend to show a fraudulent intent, especially since under the laws of Georgia the accused may not for the purpose of rebutting the statutory presumption testify as a witness under oath (Code 1933, Section 38-415), (R. 11-13).

The Supreme Court of the United States in *Bailey* v. *Alabama, supra*, having held that the Alabama Statute was repugnant to the 13th Amendment and to the peonage Statute enacted to secure the enforcement of the Amendment, said that it was unnecessary to consider the contention that the Statute also violated the 14th Amendment; yet the Court in its opinion denies the right of a State to enact a Statute making proof of one fact prima facie evidence of the main fact at issue, where the presumption is purely arbitrary, and where the accused is deprived of a proper opportunity to repel it, as violative of the requirements of due process, and the court cites with approval *Ex parte Hollman*, 79 S. C. 22, 21 L. R. A. (N. S.) 249, which holds that such a Statute is violative of both the Equal Protection and Due Process Clauses of the 14th Amendment.

In *Manley* v. *State of Georgia*, 279 U. S. 1, the Supreme Court of the United States held that a Georgia Statute providing that every insolvency of a Bank shall be deemed fraudulent as to the President and Directors, operates as a denial of due process in that the presumption created by the Statute was unreasonable and arbitrary, as pointing to no specific transaction, matter or thing or to any act or omission of the accused tending to show his responsibility. In the opinion, the Court stated that inference of crime and guilt may not reasonably be drawn from inability to pay demand deposits and other debts as they mature, and held that a State law creating a presumption

that is arbitrary or that operates to deny a fair opportunity to repel it, violates the Due Process Clause of the 14th Amendment. To the same effect:

Hawes v. *State of Georgia*, 258 U. S. 1;
Casey v. *U. S.*, 276 U. S. 413;
Western & Atlantic Ry. Co. v. *Henderson*, 279 U. S. 639.

(3) The Appellant further charges that the Statute deprives the Appellant of his liberty without due process of law in that it is so vague and indefinite and uncertain to provide a sufficiently ascertainable standard of guilt, the Statute failing to define what is meant by "good and sufficient cause." The Statute leaves the standard of guilt to be determined by the views of different courts and juries which may be called upon to enforce the Statute. "Men of common intelligence must necessarily guess at its meaning and differ as to its application."

U. S. v. *Cohen Grocery Co.*, 255 U. S. 81;
Herndon v. *Lowry*, 301 U. S. 242.

(4) The Appeal raises the further substantial Federal question that the Statute is repugnant to the equal protection clause of the 14th Amendment because it provides an unlawful discrimination against the laboring class and confers a special privilege or immunity on all other persons.

As stated by the court in the *Peonage Cases*, 123 Fed. 671, it is a vicious species of class legislation. Under the terms of the Statute the laborer is to be punished for his breach while no penalty is provided for the landlord. Such a Statute is not a legitimate exertion of the power of classification, rests upon no reasonable basis, is purely arbitrary and plainly denies the equal protection of the laws to those against whom it discriminates.

Ex Parte Hollman, 79 S. C. 9, 21 L. R. A. (N.S.) 242.

The parties to a contract are entitled to equal sanctions of the law for the protection and enforcement of their rights under it.

Ex Parte Drayton, 153 Fed. 986.

The Supreme Court of the United States has jurisdiction on appeal to determine whether a State Statute as construed and applied to the facts of a particular case by the highest court of the State is in conflict with the Federal Constitution, for the application of the Statute affirms its validity as so applied.

Fiske v. *Kansas*, 274 U. S. 380.

Conclusion.

Wherefore, it is respectfully submitted that the Appellant in the above entitled cause comes within the proper jurisdiction of the Supreme Court of the United States.

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Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 70

IRA TAYLOR,

Appellant,

vs.

THE STATE OF GEORGIA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

BRIEF FOR THE APPELLANT.

LEONARD HAAS,
THOMAS TAYLOR PURDOM,
Counsel for Appellant.

INDEX.

Subject Index.

Citations.

Cases:

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 70

IRA TAYLOR,

Appellant,

vs.

THE STATE OF GEORGIA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

BRIEF FOR THE APPELLANT.

This is an appeal from a judgment of the Supreme Court of Georgia affirming the conviction of appellant as a common cheat and swindler by the Superior Court of Wilkinson County, Georgia.

Opinions Below.

No opinion was written by the trial court.

The opinion of the Supreme Court of Georgia (R. 39-42) is reported in 191 Ga. 682.

Jurisdiction.

The judgment of the Supreme Court of Georgia was entered on March 13, 1941. The Petition for the allowance of an appeal was filed in that Court on April 8, 1941 (R. 42), and was allowed by an order of the Chief Justice of the Supreme Court of Georgia on the same date (R. 46).

The jurisdiction of this Court is invoked under Section 237 (a) of the Judicial Code, as amended (U. S. C. Title 28, Section 344a), the validity of a State Statute under the Federal Constitution having been drawn into question and the decision having been in favor of its validity.

This Court noted probable jurisdiction on May 26, 1941 (*Taylor* v. *The State of Georgia*, 312 U. S. —, 61 Sup. Ct. R. 1105).

Question Involved.

Whether the Act of August 15, 1903 (Ga. Laws 1903, p. 90; Section 26-7408 and 26-7409, Code of 1933; Penal Code, Section 715 and 716), enacted by the Georgia Legislature, violates the 13th and 14th Amendments to the Constitution of the United States and the provisions of the Federal Peonage Statute, being the Act of Congress of March 2, 1867, Chap. 187, Section 1, 14 Stat. at L. p. 546, found in R. S. Sec. 1990 and Sec. 5526 (U. S. C. Title 8, Sec. 56 and U. S. C. Title 18, Sec. 444).

Statutes Involved.

The Georgia Statute under which the appellant was tried and convicted, and the validity of which is assailed by appellant, is the Act of August 15, 1903 (Ga. Laws 1903, p. 90; Section 26-7408 and 26-7409, Code of 1933; Penal Code Section, 715 and 716), as follows:

> "Section 1. Be it enacted • • • That from and after the passage of this Act if any person shall con-

tract with another to perform for him services of any kind with intent to procure money, or other thing of value thereby, and not to perform the service contracted for, to the loss and damage of the hirer; or after having so contracted, shall procure from the hirer money, or other thing of value, with intent not to perform such service, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as prescribed in section 1039 of the Code.

"Sec. 2. Be it further enacted, That satisfactory proof of the contract, the procuring thereon of money or other thing of value, the failue to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section."

The 13th Amendment to the Constitution of the United States provides:

"Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this Article by appropriate legislation."

The 14th Amendment to the Constitution of the United States provides:

"Section 1. * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Peonage Abolition Act, the Act of Congress of March 2, 1867, Chap. 187, 14 Stat. 546 (Rev. Stat. 1990, 5526; U. S. C., Title 8, Sec. 56, U. S. C., Title 18, Sec. 444) provides:

> "Sec. 1990. The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in the territory of New Mexico, or in any other territory or state of the United States; and all acts, laws, resolutions, orders, regulations, or usages of the territory of New Mexico, or of any other territory or state, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void." (U. S. C., Title 8, Sec. 56.)
>
> "Sec. 5526. Every person who holds, arrests, returns, or causes to be held, arrested, or returned, or in any manner aids in the arrest or return, of any person to a condition of peonage, shall be punished by a fine of not less than one thousand nor more than five thousand dollars, or by imprisonment not less than one year nor more than five years, or by both." (U. S. C., Title 18, Sec. 444.)

Statement.

On April 29, 1940, in the Superior Court of Wilkinson County, Georgia, the Appellant, a negro, was convicted (R. 11) of the crime of violating Section 715 and 716 of the Penal Code of Georgia (*Supra*, pages 2-3).

He was sentenced to pay within three days a fine of Thirty-five Dollars and costs, or in default thereof to "do work in a public work camp for a period of eight months" (R. 11-12).

As pertinent, the indictment charged that the Appellant on March 25, 1939:

"contracted with R. L. Hardie to do manual labor for him at $1.25 a day in helping build a house on the farm of R. L. Hardie where he then resided in said county, said work to begin when R. L. Hardie called for him to start and to continue until he had worked out the sum of $19.50, did on the strength of said contract procure an advance on said labor of $19.50, with intent not to perform same and did fail and refuse to perform same without good and sufficient cause and did fail and refuse to pay the money so advanced back at the time the work was to be performed, to the loss and damage of the hirer" (R. 4-5).

The Appellant demurred to the indictment (R. 6-9) contending that the instant penal provisions violated the 13th and 14th Amendments to the Constitution of the United States (*Supra*, page 3), and the Peonage Abolition Act (*Supra*, page 4).

The Demurrer was overruled by the Court, to which ruling Exceptions *Pendente Lite* were filed.

The testimony on behalf of the State of Georgia may be summarized as follows:

The sole witness for the State was the prosecutor, one Hardie (R. 1; R. 16-18). He testified that he was a country merchant (R. 16); that he made loans to those who traded with him (R. 16); that the Appellant traded [illegible] (R. 13); that the Appellant rented a house that belonged to Hardie at $4.00 a month (R. 14); that he lived therein for a period of three months without paying rent (R. 14); that on or about March 5, 1939, he caused the arrest of Appellant (R. 14); apparently for non-payment of rent, and thereafter advanced payments to Appellant for Sheriff's costs (R. 14) and for the satisfaction of the warrant (R. 16) thereby causing Appellant's release (R. 14; R. 16-17), and at the same time receiving a promise from Appellant that he would "work it out" (R. 16).

He also testified that subsequently, to-wit, on March 29, 1939, he gave Appellant the sum of $19.50 as an advance payment, pursuant to an alleged agreement made on March 25, 1939, which in effect provided that the Appellant would do manual labor at the rate of $1.25 per day at some future day, whenever Hardie would undertake to build a house on his premises (R. 12-13); Hardie further testified that he began building said house in June or July, 1939 (R. 18), and at that time requested the Appellant to perform the manual labor specified in the said agreement of March 25, 1939 (R. 15), but the Appellant, according to the testimony of Hardie, refused to perform such manual labor, even though he was not working for any one, claiming that he was tired and sick, and promised that "he would get up the money" (R. 13).

According to Hardie, the Appellant never returned the sum of $19.50, and Hardie testified that while he took no legal steps to collect said money (R. 13), he caused Appellant to be indicted and charged with the crime of violating Sections 715 and 716 of the Penal Code of Georgia, *Supra*, pp. 2-3 (R. 13, 18).

Under the laws of Georgia, the accused is not permitted to be sworn as a witness in his own behalf,[1] but he has the right to make an unsworn statement which "shall have such force only as the jury may think right to give it" (Georgia Code 1933, Sec. 38-415). In making his unsworn statement to the jury, the Appellant in effect denied that

[1] Code of Georgia 1933, Sec. 38-415, 416. He cannot be sworn as a witness even with his own consent (*Roberts* v. *State*, 189 Ga. 36 (1), neither questioned by his own counsel (*Brown* v. *State*, 58 Ga. 212, nor cross-examined by the State. (Georgia Code Sec. 38-415).

The Statement is not regarded as evidence (*Bragg* v. *State*, 15 Ga. App. 623 (4)), because "evidence given by a witness has inherent strength, which even a jury cannot under all circumstances disregard. A statement has none." (*Hackney* v. *State*, 101 Ga. 512, 520).

The statement is "outlawed" as evidence (*Prater* v. *State*, 160 Ga. 138, 143).

there existed any contract between himself and Hardie to perform manual labor for Hardie in the future at a time to be fixed by Hardie, and denied that he had obtained from Hardie the sum of $19.50 (R. 15-16).

The Court charged the jury in the language of the Statute (R. 19-23), and refused to charge, as requested by the Appellant, that the Statute was unconstitutional and void (R. 23). A verdict of guilty was found by the jury (R. 11).

After sentence by the Court (R. 11-12), the Appellant filed his Amended Motion for New Trial and Motion in Arrest of Judgment based on the same constitutional grounds set up in his General Demurrer to the indictment, and upon the additional ground that the Statute was repugnant to the provisions of the Constitution of the State of Georgia prohibiting imprisonment for debt (R. 24-38).

The trial court overruled the Motion in Arrest of Judgment and the Amended Motion for New Trial (R. 38), and the Appellant appealed to the Supreme Court of Georgia, his Bill of Exceptions assigning error on the action of the trial court in overruling his General Demurrer to the indictment, his Motion in Arrest of Judgment, and his Motion for New Trial as amended (R. 38).

The Supreme Court of Georgia affirmed the judgment of the lower court, holding that (a) the Statute is not violative of the 13th Amendment to the Constitution of the United States nor of the Act of Congress forbidding peonage found in United States Revised Statutes 1990, 5526 (U. S. C. Title 8, Sec. 56; U. S. C. Title 18, Sec. 444); (b) nor is said Statute violative of Article 1, Section 1, Paragraph 21, of the Constitution of Georgia, prohibiting imprisonment for debt; (c) nor is the Statute violative of the Due Process Clause and the Equal Protection clause of the 14th Amendment to the Constitution of the United States; (d) nor did the Court err in charging the jury in terms of the Statute, nor in refusing Defendant's request to charge that the

Statute was unconstitutional and void; (e) the Court refused to overrule its prior decisions holding the Statute valid, and held that the decisions of the Supreme Court of the United States in the cases of *Bailey* v. *Alabama*, 219 U. S. 219; *Manley* v. *State of Georgia*, 279 U. S. 1, and *Western & Atlantic Ry. Co.* v. *Henderson*, 279 U. S. 639, were not controlling (R. 39-42).

Assignments of Error.

1.

The Supreme Court of Georgia erred in holding that the Statute of the State of Georgia, to-wit: the Act of August 15, 1903, is not violative of the 13th Amendment to the Constitution of the United States, which prohibits slavery or involuntary servitude except as punishment for crime, nor of the Acts of Congress forbidding peonage found in United States Revised Statutes, Section 1990, 5526 (U. S. C. Title 8, Sec. 56, U. S. C. Title 18, Sec. 444).

2.

The Supreme Court of Georgia erred in holding that the said Statute is not violative of the Due Process Clause of the 14th Amendment to the Constitution of the United States.

3.

The Supreme Court of Georgia erred in holding that the said Statute is not violative of the Equal Protection Clause of the 14th Amendment to the Constitution of the United States.

4.

The Supreme Court of Georgia erred in holding that the decisions of this Court in *Bailey* v. *Alabama*, 219 U. S. 219, and *Manley* v. *State of Georgia*, 279 U. S. 1, were not controlling.

5.

The Supreme Court of Georgia erred in affirming the judgment of the Superior Court of Wilkinson County, Georgia, convicting the Appellant of violating the Act of August 15, 1903, as against the Appellant's contention that the said Act is repugnant to the 13th and 14th Amendments to the Constitution of the United States and to the provisions of the Acts of Congress forbidding peonage, found in United States Revised Statutes, Section 1990, 5526 (U.S.C. Title 8, Sec. 56; U.S.C. Title 18, Sec. 444).

Summary of Argument.

1. The Georgia Statute herein assailed is violative of the 13th Amendment to the Constitution of the United States and of the Act of Congress forbidding peonage, in that the fundamental purpose of the Statute is to compel, under the sanction of the criminal law, the enforcement of a contract for personal service. Though the Statute purports to punish fraud, its natural and inevitable effect is to expose to conviction for crime those who simply fail or refuse to perform contracts for personal service in liquidation of a debt. The State may not compel a man to labor for another in payment of a debt by punishing him as a criminal if he does not perform the service or pay the debt, nor can it accomplish the same result by creating a statutory presumption which, upon proof of no other fact, exposes him to conviction and punishment. The Statute seeks in that way to provide the means of compulsion through which performance of such service may be secured. "The power to create presumptions is not a means of escape from constitutional restrictions."

2. The Georgia Statute is violative of the Due Process Clause of the 14th Amendment, in that the presumption of fraudulent intent created by the Statute is unreasonable and

arbitrary, as the failure to complete the service or to return the money bears no logical relation to the fact presumed, and points to no specific act or omission on the part of the accused tending to show any fraudulent intent. The operation and effect of the Statute is a legislative declaration or fiat declaring the Defendant presumptively guilty of crime, and operates to deny the accused a fair opportunity to repel it. Inference of crime and guilt may not reasonably be drawn from mere refusal to complete the service or to return the money. The presumption of guilt raised by the Statute is thus made sufficient to outweigh the presumption of innocence, and puts the burden on the accused to negative or explain away every fact which might tend to show a fraudulent intent; especially since, under the laws of Georgia, the accused may not, for the purpose of rebutting the statutory presumption, testify as a witness under oath.

3. The Georgia Statute is further violative of the Due Process Clause of the 14th Amendment to the Federal Constitution in that it is too vague, indefinite and uncertain to provide a sufficiently ascertainable standard of guilt, the Statute failing to define what is meant by "good and sufficient cause." The Statute leaves the standard of guilt to be determined by the views of the different Courts and juries which may be called upon to enforce the Statute. "Men of common intelligence must necessarily guess at its meaning and differ as to its application." It fails to furnish the accused information as to the nature and cause of the accusation against him.

4. The Georgia Statute is repugnant to the Equal Protection Clause of the 14th Amendment to the Federal Constitution, because it creates an unlawful discrimination against the laboring class, and confers a special privilege or immunity on all other persons. "The parties to a con-

tract are entitled to equal sanctions of the law for the protection and enforcement of their rights under it."

ARGUMENT.

I.

The statute is violative of the 13th Amendment to the Federal Constitution which prohibits slavery or involuntary servitude, except as punishment for crime, and of the Act of Congress forbidding peonage.

It is a strange anomaly that Georgia, colonized as a protest against the English custom of imprisonment for debt, has itself legalized the same custom. It is stranger still that this practice is permitted in the face of the provision of the Constitution of the State of Georgia, which prohibits imprisonment for debt (Code 1933, Section 2-121). Not only so, but the Act of August 15, 1903, which makes it possible to imprison men for debt in Georgia, also operates to create and maintain a condition or system of peonage, in which large numbers of unfortunates are still being held. That the Emancipation Proclamation and the 13th Amendment did not succeed in freeing the slaves, and that involuntary servitude still exists in the form of peonage, is widely commented on in the current public press since the recent indictment of Georgia citizens by a Federal Grand Jury in Chicago.[2]

At a meeting of the Georgia Baptist Convention in 1929, a Resolution, unanimously adopted by the Convention, recited that:

> "There are more negroes held by these debt slavers than were actually owned as slaves before the War be-

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[2] See *News Week*, June 2, 1941, p. 15; *New York Times*, May 30, 1941, pages 3, 4, column 1; *Atlanta Constitution*, May 30, 1941, page 1; *Associated Press Dispatches*, May 10, May 12, and May 30, 1941.

tween the States. The method is the only thing which has changed."[3]

On April 22, 1921, the situation in Georgia became so acute that the Governor of Georgia felt it necessary to call a conference of leading citizens to meet in the City of Atlanta to consider the condition of the negro in Georgia. In his address to the Conference, he recounts in detail 135 cases of peonage and other cruelties which "without design, or the knowledge of each other, Georgians, with one exception, have called these cases to my attention as Governor of Georgia."[4]

In the course of the address the Governor stated:

> "As Governor of Georgia, I have asked you, as citizens having the best interests of the State at heart, to meet here today to confer with me as to the best course to be taken. To me it seems that we stand indicted as a people before the world. If the conditions indicated by these charges should continue both God and man would justly condemn Georgia more severely than man and God have condemned Belgium and Leopold for the Congo atrocities."[5]

In closing his address he urges as a remedy "to end these conditions" six proposals, the fifth one of which was:

> "The repeal of Code Section 716 together with 715 which reads as follows:"[6]

Then follows the Sections of the Criminal Code, which are the identical Sections assailed herein.

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[3] See *Proceedings of Georgia Baptist Convention*, 1939, p. 45, published by Foote & Davies, Atlanta, Georgia.

[4] See page 2 of pamphlet entitled "A Statement from Governor Hugh M. Dorsey As to the Negro in Georgia April 22, 1921" on file in Reference Department (R. 326) of the Carnegie Library, in Atlanta, Georgia.

[5] See pages 22 and 23 same pamphlet.

[6] See page 2 same pamphlet.

This address of Governor Dorsey of Georgia received widespread comment throughout the country.[7]

The lot of the southern tenant farmer has been notoriously hard, and among his difficulties has been the impossibility of making his laborers live up to their contracts. For many years, there has been a strong public feeling in some parts of the South that the negro will not work unless he is forced to work, and that special legislation is required to force them to perform their labor contracts and to compel them to work out their debts. It was felt that the best method of accomplishing this purpose was the threat of a jail sentence, and this feeling has found expression in the labor legislation similar to the Statute in the instant case. *U. S.* v. *Clement*, 171 Fed. 974.

Legislation of this character has resulted in the establishment and maintenance of a system of peonage by using the authority of the law to keep persons in a condition of involuntary servitude by coercing performance of their labor contracts. *Ex Parte Drayton*, 153 Fed. 986.

The legislators were evidently emboldened to enact such laws by the astonishing decisions of some of the Courts, such as *United States* v. *Eberhardt*, 127 Fed. 254 (D. C. Georgia), where it was held that an indictment charging the defendants with restraining certain negroes of their personal liberty and with compelling them to work for the defendants against their will, did not state an offence within the Federal Statute abolishing peonage, the Court holding that the Statute was not applicable in Georgia *as the system of peonage had never existed in Georgia.* The opinion states (at page 252):

> "However wrongful and illegal some of the acts charged in the indictment may be they cannot be punished under the Statute named."

[7] See *New York Times*, May 1, 1921, Section 2, page 1, column 8; *Literary Digest* May 14, 1921, page 17; *Review of Reviews*, Vol. LXIII No. 6 June, 1921, page 575.

See also, *United States* v. *Broughton*, 213 Fed. 345 (D. C. Ala.); *State* v. *Williams*, 32 S. C. 123; *State* v. *Murray*, 116 La. 655.

A different view of the matter was taken by other judges, from whom came some forthright, courageous pronouncements, such as that of the able, eloquent and comprehensive charge of the court to the Grand Jury in Peonage Cases, 123 Fed. 671 (D. C. Ala.) where it is said (at page 687):

> "An employer with such power over the sustenance and liberty of another is master of his destiny and liberty, and the laborer or renter in such a condition is a serf in all but name."

The entire charge of the court in that case might well be used as a text-book on the law of peonage, and is indeed worthy of the eminent jurist who delivered it.[8]

That this wretched system of peonage has been made possible by the Statute now before this Court, and others of a cognate nature, has been held by the various Federal and State courts which have declared such statutes unconstitutional and void.[9]

The extent to which this vile system, with its resulting brutalities and outrages, has been carried in Georgia is shockingly revealed in the "Murder Farm Cases" of *Williams* v. *State*, 152 Ga. 498, and *Manning* v. *State*, 153 Ga. 184.

It was assumed that the death knell of these iniquitous practices had been sounded when this Court, in the case of

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[8] Judge Thomas G. Jones was an Aide on General Lee's Staff, carried the flag of truce at Appomattox; author of the first Code of ethics adopted by the American Bar Association; Governor of Alabama 1890 to 1894; and a Federal Judge from 1901 until his death in 1914. See 27 *American Bar Ass'n Journal* 263.

[9] *United States* v. *Reynolds*, 235 U. S. 133; *State* v. *Armstead*, 103 Miss. 790; *State* v. *Oliva*, 144 La. 51, *Clyatt* v. *United States*, 197 U. S. 207; *Ex Parte Hollman*, 79 S. C. 9; *Ex Parte Drayton*, 153 Fed. 986; *Taylor* v. *United States*, 244 Fed. 321.

Bailey v. *Alabama*, 219 U. S. 219, declared a similar Alabama Statute violative of the 13th Amendment and of the Acts of Congress forbidding peonage. While there were two dissents in that case, there has been no departure from the principles laid down therein, though the case was decided more than thirty years ago.

The presumption of fraudulent intent is created by the Alabama Statute upon failure to complete the service or to return the money "*without just cause;*" under the Georgia Statute, it is "without good and sufficient cause."

The Statute assailed herein has been before the Supreme Court of Georgia three times since the decision in the *Bailey* case, and in each instance the court has refused to follow the ruling in the *Bailey* case. In the first of these cases, *Latson* v. *Wells*, 136 Ga. 681, the court held that even if Section 2 of the Act was invalid, that Section 1 was valid, notwithstanding the decision in the case of *Bailey* v. *Alabama*, *Supra*, in that the purpose and intent of the Statute was to punish fraud; that Section 2 which creates the presumption of fraudulent intent was merely a rule of evidence and that the court would not pass on the validity of that Section, since the accused had pleaded guilty in the trial court.

In *Wilson* v. *State*, 138 Ga. 489, the second case to come before the Supreme Court of Georgia since the decision in *Bailey* v. *Alabama*, *Supra*, the court held that neither Section 1 nor Section 2 of the Statute was repugnant either to the 13th Amendment or to the Federal Peonage Statutes; that fraud was the gist of the crime, and that the intent and purpose of the Statute was to punish fraud and not merely breach of contract; that the decision in *Bailey* v. *Alabama*, *Supra*, was not controlling because the intent and purpose of the Georgia Statute was to punish fraud; that under the Alabama Statute the defendant could not testify as to his uncommunicated intent, while in

Georgia the defendant can make a statement though not under oath, which the jury have a right to believe, and that the ruling in the *Bailey* case did not rest entirely upon the Statute, but also upon the rule of evidence.

The last time the Statute was before the Supreme Court of Georgia was in the case at bar, in which case the Supreme Court of Georgia simply followed its previous rulings in *Latson* v. *Wells*, *Supra*, and *Wilson* v. *State*, *Supra*, and refused appellant's request to overrule these, as well as all other Georgia decisions, holding the Statute valid and constitutional (R. 40).

It is respectfully submitted that the decisions of the Georgia Supreme Court above set out are convincingly disposed of by the decision and opinion of this Court in *Bailey* v. *Alabama*, *Supra*, and the appellant relies on that decision as being absolutely controlling of the instant case. We can add nothing to the able analysis contained in the opinion of the court in that case, and what is said below is but a summary and repetition of the argument and language used by Mr. Justice Hughes in the opinion in that case.

Under the Statute, it is sufficient for a conviction to show simply that the accused had made the contract in question, had refused to return the money or perform the service without good and sufficient cause, without showing any fraudulent intent on the part of the accused. There is not a scintilla of evidence of fraudulent intent anywhere in the Record, the fraud required by the Statute being supplied by the presumption. The Statute makes criminal the non-payment of a debt. It lends the aid of the criminal law to the enforcement of a mere civil contract without regard to the intent of the defendant, as fraudulent intent is presumed.

The trial court charged the jury in the language of the Statute, and permitted the jury to bring in a verdict of

guilty based solely upon the presumption raised by the Statute. The court charged the jury as follows:

> "Gentlemen of the jury, I charge you the burden is upon the State to show affirmatively that the accused failed to perform the services contracted for, if they show a contract, and failed to return the money advanced on the strength of the contract. The State must prove that there was no good reason why contract was not performed, or no good reason why accused did not return the money advanced to him on the strength of the contract. The State of Georgia must show that the accused failed to perform the contract and in failing to perform the contract, the defendant did so without good and sufficient cause" (R. 21).

If it be argued that the Statute does not require the jury to convict, the point is that the Statute authorizes the jury to convict, and the jury did convict, because the trial court charged the jury that refusal to perform the service or to repay the money, without good and sufficient cause, constituted *prima facie* evidence of the commission of the crime which the Statute defines. The jury found the appellant guilty of an intent to defraud, though more than two or three months elapsed before he was ever called on to perform his contract, according to prosecutor's own testimony (R. 17). In effect, it was the same as if the Statute had made it a crime simply to break the contract. It does not suffice to say that the purpose of the Statute was to punish fraud. In construing the Statute, the court has regard to substance and not form, and the Statute must be tested by its operation and effect. *Near* v. *Minnesota*, 283 U. S. 708; *United States* v. *Reynolds*, 235 U. S. 133.

> "To say that he has been found guilty of an intent to injure or defraud his employer, and not merely for

> breaking his contract and not paying his debt, is a distinction without a difference to Bailey."
> *Bailey* v. *Alabama*, 219 U. S. 219, 236.

The obvious effect of the Statute is to compel, under the coercion of a criminal Statute, the enforcement of a contract for personal service, and to make one guilty of crime who simply fails or refuses to perform such service contract in liquidation of a debt. The Statute seeks to compel the laborer's service by making it a crime to refuse or fail to perform it. The compulsion to serve is brought about by the fear of the punishment prescribed by the law.

> "In contemplation of the law, the compulsion to such service by the fear of punishment under the criminal Statute is more powerful than any guard which the employer could station."
> *Ex Parte Hollman*, 79 S. C. 9.

Under the Georgia law (Code Section 38-415), the accused is prohibited from testifying as a witness under oath to rebut the statutory presumption, and the jury is absolutely free to disregard his unsworn statement. As stated by the court in *Bailey* v. *Alabama*, 219 U. S. 219, 236:

> "He stood, stripped by the Statute of the presumption of innocence, and exposed to conviction for fraud upon evidence only of a breach of contract and a failure to pay."

The real purpose of the Statute is to coerce the laborer to perform the labor required of him under penalty of imprisonment, should he fail or refuse. The presumption created by the Statute is but a legislative judgment enforcing involuntary servitude. It does not imprison the laborer because he refuses to pay the debt or perform the service.

but because he does not enter into or continue in involuntary servitude. There is no punishment for the alleged fraud if the service is performed or the money repaid. Under the guise of the police power, the Statute compels the laborer to continue against his will in the personal service of another.

In the case at bar, the Appellant had previously been arrested on a warrant sworn out by the prosecutor, Hardie, and the money loaned the accused by Hardie was used to pay off the costs of the previous warrant (R. 16). In this respect the case is quite similar to that of *United States* v. *Reynolds*, 235 U. S. 133, where a surety paid the fine upon the negro's agreement to work for him, and subsequently had the negro arrested and convicted for violating his contract for service. In commenting on the operation and effect of the Alabama Statute, the Court said (at page 146):

> "Under this Statute, the surety may cause the arrest of the convict for violation of his labor contract. He may be sentenced and punished for this new offense, and undertake to liquidate the penalty by a new contract of a similar nature, and, if again broken may be again prosecuted, and the convict is thus kept chained to an everturning wheel of servitude to discharge the obligation which he has incurred to his surety, who has entered into an undertaking with the state, or paid money in his behalf. The rearrest of which we have spoken is not because of his failure to pay his fine and costs originally assessed against him by the state. He is arrested at the instance of the surety, and because the law punishes the violation of the contract which the convict has made with him."

Thus, it would seem that in the instant case, Hardie, the prosecutor, by causing the arrest and prosecution of Taylor, and not Taylor, the Appellant, was guilty of crime. *Clyatt*

v. *United States*, 197 U. S. 207; U. S. C. Title 18, Sec. 444; *Davis* v. *United States*, 12 Fed. (2d) 253 (C. C. A. 5th).

In charging the Grand Jury *in re Peonage Charge*, 138 Fed. 686, 690 (D. C. Fla.), the Court spoke as follows:

> "I have described to you the most insidious form of peonage, the form hardest to deal with, because the act of the master is so covered up with legal forms as to give it the semblance of a just criminal proceeding against the servant; but in the exercise of your good sense you will be able to see through any subterfuge that may be adopted, and to get at the real intention of the parties."

The Supreme Court of Georgia in *Wilson* v. *State*, *Supra*, attempts to distinguish *Bailey* v. *Alabama*, *Supra*, upon the ground that under the Alabama Statute the accused is not permitted to testify as to his uncommunicated motives, whereas in Georgia such is not the case, although the accused cannot testify as a witness and could merely make an unsworn statement to the jury.

This attempted distinction is severely criticized by the editors of United States Code Annotated, in U. S. C. Title 8 Sec. 56, at page 66, where it is stated that while the rule of evidence may have played some part in the decision in *Bailey* v. *Alabama*, it was not at all a determinative factor in the case, as is readily disclosed by a reading of the opinion of Mr. Justice Hughes in that case, which expressly denies the validity of the Statute on the constitutional grounds above set out. The rule of evidence is mentioned only as an additional factor which entered into the court's decision.

> "If this Act and others of cognate character are sustained, the State may by its criminal laws completely nullify and abrogate the main object of the amendment prohibiting slavery and involuntary servitude, and establish a complete system of peonage."
>
> *Ex Parte Drayton*, 153 Fed. 986, 992 (D. C. S. Car.).

II.

The presumption created by the statute is so arbitrary and unreasonable as to constitute a denial of due process of law and the equal protection of the laws.

The power of a State to regulate the procedure and rules of evidence in its courts does not go to the extent of authorizing it to create by Statute an arbitrary presumption of guilt, even though the presumption is prima facie only. A legislature may not declare a person guilty or presumptively guilty of crime. *McFarland* v. *American Sugar Refining Co.*, 241 U. S. 79.

There must be some reasonable and logical connection between the thing proved and the thing which the State presumes as an inference therefrom. If the inference is unreasonable and arbitrary, the Defendant convicted thereby is denied Due Process of law. These principles are now well settled. *Manley* v. *Georgia*, 279 U. S. 1; *Western & Atlantic Railroad Co.* v. *Henderson*, 279 U. S. 639.

In *Bailey* v. *Alabama*, 219 U. S. 219, this Court, having held that the Alabama Statute was repugnant to the 13th Amendment and to the Federal Peonage Statutes, said that it was unnecessary to consider the contention that the Statute also violated the 14th Amendment, yet the Court, in its opinion, denies the right of a State to adopt a Statute making proof of one fact prima facie evidence of the main fact at issue where the presumption is purely arbitrary and unreasonable, and states (at page 239):

> "It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption, any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions."

Likewise in *Hodges* v. *United States*, 203 U. S. 1, Mr. Justice Harlan, in dissenting from the judgment of the court, said (at page 28):

> "It may also be observed that the freedom created and established by the 13th Amendment was further protected against assault when the 14th Amendment became a part of the supreme law of the land; for that Amendment provided that no state shall deprive any person of life, liberty, or property without due process of law. To deprive any person of a privilege inhering in the freedom ordained and established by the 13th Amendment is to deprive him of a privilege inhering in the liberty recognized by the 14th Amendment."

In *Manley* v. *Georgia*, 279 U. S. 1, the court held that a Georgia Statute, providing that every insolvency of a Bank shall be deemed fraudulent as to the President and Directors, operates as a denial of Due Process. In the opinion, the court stated that inference of crime and guilt may not reasonably be drawn from inability to pay demand deposits and other debts as they mature, and held that a Georgia Statute creating a presumption that is arbitrary or that operates to deny a fair opportunity to repel it violates the Due Process Clause.

In the instant case, the failure to return the money or complete the service bears no reasonable relation to the fact presumed, namely fraudulent intent, for the failure to return the money or perform the service furnishes no basis for any inference as to whether the accused intended to perform the service at the time he obtained the money. Whenever a person violates a contract by refusing to pay a note or other debt and a judgment is taken against him, that is a solemn adjudication that he does so "without good and sufficient cause," yet it cannot be argued that it is fraudulent. The State denies the accused a fair

opportunity to repel the presumption of fraudulent intent, in that the accused is required to show a "good and sufficient cause" why the service was not completed or the money returned. The issue is whether the promise was made with fraudulent intent and the State cannot substitute presumption for proof, thereby denying the Defendant the right to prove as a complete defense that at the time the promise was made there was no intent to defraud. The requirement that the Defendant must show that he was prevented from fulfilling the promise, in addition to proving that it was not knowingly false when made, has the effect of closing the doors of the court in his face and of depriving him of the right to deny the charge against him. In its operation and effect, the Statute casts upon the accused the burden of showing the absence of any fraudulent intent, and, in essence, his innocence of the crime with which he is charged—this being an unreasonable and arbitrary exercise of its power by the State. The right of the Defendant to rebut such presumption cannot be limited by the Statute to "good and sufficient cause." The inference of one fact from proof of another is so unreasonable as to be purely arbitrary. It amounts to an arbitrary declaration by the Legislature that the accused is guilty, or presumptively guilty, of crime, and operates to deny him a fair opportunity to repel it. The Statute, in raising the presumption of fraudulent intent, does not merely lay down a rule of evidence, but creates an inference which is given the effect of evidence, and which prevails unless overcome by the weight of opposing testimony. This denies Due Process of law. *Western & Atlantic Railroad Co.* v. *Henderson*, 279 U. S. 639.

In *Manley* v. *Georgia*, 279 U. S. 1, it is said:

> "Mere legislative fiat may not take the place of fact in the determination of issues involving life, liberty or property" (page 6).

The Statute puts the burden on the accused to explain away every fact which might tend to show fraudulent intent. Especially is this a denial of Due Process to the appellant, since under the laws of Georgia he was not permitted for the purpose of rebutting the statutory presumption to testify as a witness under oath, though he was permitted to make an unsworn statement to the jury which the jury was entitled to accept or wholly reject. *Georgia Code*, 1933, Sec. 38-415.

It is true that the Court held in *Hawes* v. *U. S.*, 258 U. S. 1, that this in itself is not sufficient to prevent the State from raising a presumption against the accused, but that such a statutory disqualification of the defendant as a witness is a factor which must be given some consideration in construing the reasonableness of the presumption, is pointed out in the opinion in *Bailey* v. *Alabama*, *supra*, though it is mentioned only as an additional factor entering into the decision. The Statute thus operates to deprive the accused of the right to present his defense to the main fact presumed by the Statute. It fails to afford him a reasonable opportunity to submit under oath to the jury in his defense all of the facts bearing upon the issue, and thus fails to provide the accused the Equal Protection of the law and Due Process of law.

It is significant that similar Labor Service Statutes have been declared unconstitutional in other States even though in these jurisdictions the defendant was not deprived of his right to testify as a witness under oath. *State* v. *Oliva*, 144 La. 51; *Good* v. *Nelson*, 73 Fla. 29; *State* v. *Armstead*, 153 Miss. 790; *Ex Parte Hollman*, 79 S. C. 9; *Ex Parte Drayton*, 153 Fed. 986 (D. C. So. Car.).

In view of the foregoing, it is respectfully submitted that the presumption now before the Court is so unreasonable, arbitrary, harsh and oppressive, as to constitute a

denial of Due Process of Law and to deny the accused the Equal Protection of the law.

III.

The Statute is so vague and indefinite as to constitute a denial of Due Process of law.

In so far as the Statute provides that failure to perform the services or to return the money "without good and sufficient cause" shall be deemed presumptive evidence of an intent to defraud, the Statute is too vague and indefinite to provide a sufficiently ascertainable standard of guilt, the Statute failing to define what is meant by "good and sufficient cause."

> "The words themselves have no ascertainable meaning, either inherent or historical."
>
> *Thornhill* v. *Alabama*, 310 U. S. 88, at page 100.

The Statute points out no specific action or conduct on the part of the accused as satisfying the words "good and sufficient cause." It furnishes no guide or standard by which court or jury may appraise the conduct of the accused and judge as to his guilt. In this respect the Statute fails to furnish a sufficiently ascertainable standard of guilt to satisfy the requirements of due process. *Herndon* v. *Lowry*, 301 U. S. 242.

Taken as a whole the Statute does no more than submit to a jury the question of whether in their judgment the conduct of the accused in failing to comply with his contract is such that on general principles he should be condemned to penal servitude.

In *Lanzetta* v. *State of New Jersey*, 306 U. S. 451, 453, this Court announced the ruling that:

> "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal

statutes. All are entitled to be informed as to what the State commands or forbids."

Due Process of Law imposes upon a State an obligation to frame its criminal statutes so that those to whom they are addressed may know what standard of conduct is intended to be required. *Cline* v. *Frink Dairy Co.*, 274 U. S. 445, 458.

A Statute denies Due Process of law if it fails to furnish the accused information as to the nature and cause of the accusation against him. *Weeds* v. *United States*, 255 U. S. 109.

In *United States* v. *Cohen Grocery Co.*, 255 U. S. 81, an Act of Congress made it a crime for any person "wilfully to make any unjust or unreasonable rate or charge in handling or dealing with any necessaries." The Court held that the "unjust or unreasonable" test was so vague as to make the Statute void as a denial of Due Process of law.

The two cases last cited arose under the 5th Amendment as they involved Congressional legislation. Of course, the same principle applies to State legislation under the 14th Amendment.

The essential elements of Due Process of law are notice and an opportunity to defend, and in determining whether such rights are denied, the Court should be governed by the substance of things and not be mere form. *United States* v. *Cruikshank*, 92 U. S. 542.

From the foregoing authorities, the principles to be applied to the instant case are well settled and are easily stated. The standard applicable to criminal liability is not that to be applied in civil matters. It must be more definite. It must be one which will enable the average man to determine at the time he acts whether or not he is violating the law. It must not leave the ascertainment of guilt

to the idiosyncrasies and varying opinions of those who happen to compose the court and jury.

> "• • • and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."

Connally v. *General Construction Co.*, 269 U. S. 385, 391.

The constitutional right of the defendant to be informed of the nature of the accusation against him entitles him also to insist at the outset that the indictment shall apprise him of the crime charged, with such reasonable certainty that he can make his defense and properly protect himself. *Rosen* v. *United States*, 161 U. S. 29.

Many other cases could be cited to like effect. The sum and substance of the whole matter is that no information whatever is given to the Defendant as to the matters on which he is really to be tried; that the actual operation of the Statute in the instant case places the Defendant before a jury with a sweeping presumption of guilt against him, and without that notice of the real nature of the accusation against him which is of the essence of Due Process of Law.

IV.

The statute is repugnant to the equal protection clause of the 14th Amendment, because it creates an unlawful discrimination against the laboring class and confers a special privilege or immunity on all other persons.

Under the terms of the Statute, the laborer is punished for his breach, while no penalty is provided for the employer. Such a Statute is not a legitimate exercise of the power of classification, rests upon no reasonable basis, is

purely arbitrary, and plainly denies the Equal Protection of the law to those against whom it discriminates.

In commenting on a similar Alabama Statute, the Court said in *Peonage Cases*, 123 Fed. 671 (D. C. Ala.) (at pages 688-689-691):

> "It is a vicious species of class legislation. • • • Legislative power cannot arbitrarily single out particular classes of persons and put burdens upon them, bottomed upon breaches of their contracts, to prevent their working elsewhere, which are not enforced against other classes or person, similarly circumstanced, who break like contracts. • • • It is unjust discrimination against a class, and the denial of 'the equal protection of the law' to laborers, and renters who contract to cutlivate crops. It attaches consequences to the breaches of their contract obligations, and erects barriers to their right to pursue their usual callings, which are raised up by law against no other class of men under like circumstances. It attempts to coerce performance of their contracts of personal service by means unknown to the law of the land, in the same localities, upon breaches of like contracts by all other classes of citizens."

In *Ex Parte Hollman*, 79 S. C. 9, the Court, in holding a similar Statute violative of the 14th Amendment, because it did not bear equally on the employer and employee, said:

> "The parties to a contract are entitled to equal sanctions of the law for the protection and enforcement of their rights under it."

In *Ex Parte Drayton*, 153 Fed. 986 (D. C. S. Car.), the Court held that a Statute almost identical with the Statute in the instant case was violative of the equality clause of the 14th Amendment, being intended to cover agricultural laborers only, and said:

> "It is directed towards a single class of citizens, which is arbitrarily singled out and punished for failure to perform certain duties." (P. 991.)

Conclusion.

We wish, in conclusion, to quote, as appropriate to the case at Bar, the exalted language of Mr. Justice Black, found in the opinion in *Chambers* v. *Florida*, 309 U. S. 229, as follows:

> "The scope and operation of the Fourteenth Amendment have been fruitful sources of controversy in our constitutional history. However, in view of its historical setting and the wrongs which called it into being, the due process provision of the Fourteenth Amendment—just as that in the Fifth—has led few to doubt that it was intended to guarantee procedural standards adequate and appropriate, then and thereafter, to protect, at all times people charged with or suspected of crime by those holding positions of power and authority." (Page 235.)
>
> "Today, as in ages past, we are not without tragic proof that the exalted power of some governments to punish manufactured crime dictatorially is the handmaid of tyranny. Under our constitutional system, courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement." (Page 241.)

A ringing pronouncement from this tribunal, declaring this oppressive Statute unconstitutional and void, would constitute a second Emancipation Proclamation for the present debtor slaves in Georgia.

Respectfully submitted,

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(5617)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 70

IRA TAYLOR

v.

THE STATE OF GEORGIA

Appeal from The Supreme Court of the State of Georgia.

BRIEF FOR THE APPELLEE

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INDEX

Cases Cited

Page

STATUTES

CONSTITUTIONAL CITATIONS

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 70

IRA TAYLOR

v.

THE STATE OF GEORGIA

Appeal from The Supreme Court of the State of Georgia.

BRIEF FOR THE APPELLEE

This is an appeal from a judgment of the Supreme Court of Georgia affirming the conviction of Appellant as a common cheat and swindler by the Superior Court of Wilkinson County, Georgia.

Opinions Below

No opinion was written by the trial court.

The opinion of the Supreme Court of Georgia (R. 39-42) is reported in 191 Ga. 682.

Jurisdiction

It is admitted that the Supreme Court of the United States has jurisdiction.

Question Involved

Whether the Act of August 15, 1903 (Ga. Laws 1903, page 90, Section 26-7408 and 26-7409, Code of 1933: Penal Code, Sections 715 and 716), enacted by the Georgia Legislature, violates the 13th and 14th Amendments to the Constitution of the United States and the provisions of the Federal Peonage Statute, being the Act of Congress of March 2, 1867, Chapter 187, Section 1, 14 Stat. at L. p. 546, found in R. S. Sec. 1990 and Sec. 5526 (U. S. C. Title 8, Sec. 56 and U. S. C. Title 18, Sec. 444).

Statutes Involved

The Statutes involved are correctly set out in Appellant's brief. (Pages 2, 3, and 4.)

Statement

The statement of Appellant is substantially correct and it is desired to add nothing to it.

Summary of Argument

1. The Georgia Statute herein assailed is not violative of the 13th Amendment to the Constitution of the United States and of the Act of Congress forbidding peonage, because the fundamental purpose of the statute as construed by the Supreme Court of Georgia and the Court of Appeals of Georgia is not to punish for failure to perform services or pay debts, but to punish for fraudulently procuring money or other thing of value. The construction of a State statute is a matter for the State Courts and the Federal Courts would accept the construction so made by the State Courts. The second section

of the Georgia statute herein assailed is separate and distinct from the first section. The first section deals with a substantive offense, the second deals with a rule of evidence in proving the commission of the offense. The holding of one to be invalid will not necessarily result in declaring the other invalid. The State has the power to create rules of evidence creating a presumption if such presumption is rational. The second section of the Georgia statute in question creates a rule of evidence and a presumption which is rational. The second section of the Georgia statute in question as construed by the State Courts does not deprive a defendant of any of the rights guaranteed him by the 13th Amendment, nor is it violative of the provisions of the law forbidding peonage, but on the contrary it places the burden on the State of Georgia to prove all of the elements of an ordinary cheating and swindling case, and in addition to prove all of the things set out in said section.

2. The Georgia statute is not violative of the Due Process Clause of the 14th Amendment, in that the presumption of fraudulent intent created by the statute is unreasonable and arbitrary. Failure to perform the service or to return the money without good and sufficient cause does create a presumption of fraudulent intent in the mind of a reasonable man. The defendant cannot be harmed by this rule of evidence established by the statute of Georgia because the burden is on the State to prove that his failure was without good and sufficient cause. If the State proves all this, the defendant is only presumptively guilty of having the intent to defraud when he obtained the advancement. Under the Georgia law he can repel this presumption by putting up evidence or by making his own statement not under oath. This statement shall have such force as the jury may think right to give it and they may believe it in preference to the testimony of the case. The Georgia Courts have construed the two sections of this statute to

mean that the State must prove the contract, the procurement on same of money or other thing of value, the failure to perform the services or failure to return the money, without good and sufficient cause and loss and damage to the hirer, all of these things, and in addition thereto the State must prove that the accused had an intent to defraud at the time he obtained the advancement.

3. The Georgia Statute is not violative of the Due Process Clause of the 14th Amendment to the Federal Constitution, in that it is too vague and indefinite and uncertain to provide a sufficiently ascertainable standard of guilt because the statute fails to define what is meant by "good and sufficient cause." Under the construction of the State Courts and by logic and reason if the defendant had the intent to perform the contract, or to pay back the money in case he did not perform it, at the time he procured the advancement, he could never be convicted even though his good intent may have been changed by some cause however trivial, one minute after he procured the advancement. Therefore, *any* cause which caused a change in the intent of the defendant from good to evil would be a good and sufficient cause. If there was a change in the defendant's intent any cause producing this change would of necessity be a good and sufficient cause.

4. The Georgia statute is not repugnant to the Equal Protection Clause of the 14th Amendment because it creates an unlawful discrimination against the laboring class and confers a special privilege of immunity on all other persons.

ARGUMENT

As the first three paragraphs covered in my summary of argument cover practically the same questions they will be argued together.

I, II and III.

It will be admitted that slavery and peonage once existed in Georgia, but it is denied that it now exists in any form or phase which is countenanced by the statutes of Georgia or its Courts. There are and always have been criminals in every state of the Union who are willing not only to cause involuntary servitude but are willing to commit murder for money. But the State of Georgia through its laws and its Courts jealously defends the constitutional rights to liberty and due process of the law of all of its citizens.

Nor is the Georgia statute in question invoked to any appreciable extent by any of the citizens of Georgia. This act was passed on August 15, 1903. There are approximately three and one-half million people in the State of Georgia. The Act has been in force nearly forty years and in all that time there have been only about one hundred cases arising under this Act to reach the Appellate Courts of Georgia. In the last fifteen years there have been approximately ten cases to reach the Appellate Courts of Georgia. Out of the approximate one hundred appealed about fixe have been affirmed and the rest reversed. Where the cases were carried up on the sufficiency of the evidence, approximately eight of the cases have been affirmed when they were carried up on constitutional grounds only. Therefore, it can be safely said that the Appellate Courts have construed this statute so strictly that the constitutional rights of its citizens are well guarded and guaranteed by the State of Georgia. As to the number of cases under this statute actually being tried in the

trial courts, it is safe to say that the number is negligible because where the Appellate Courts are reversing ninety-five out of one hundred, practically all convicted would be appealed. So even if we presume that this statute is conducive of peonage, imprisonment for debt, and involuntary servitude it is manifestly evident that very few wicked people in Georgia are taking advantage of it when it appears that during the last fifteen years in a state of three and one-half million population only ten of such cases have reached the Appellate Courts of Georgia.

It is said that the statute of Georgia in question violates the 13th Amendment which prohibits slavery or involuntary servitude, except as punishment for crime, and that it also violates the Act of Congress forbidding peonage.

It is a well settled proposition that any State may pass a law punishing as a crime any person found guilty of obtaining money or other thing of value by false promises or false representations with intent to defraud.

The construction of a State statute is a matter for the State Courts, and the Federal Courts will accept the construction so made by the State Courts.

Cargill v. Minnesota, 180 U. S. 452 (21 Sup. Ct. 423, 45 L. Ed. 619).

The Georgia Courts have always held that the gravamen of the offense charged under the statute in question is the fraud perpetrated, and these sections have for their purpose solely the punishment of fraud, and not the creation of a remedy for the collection of debts or the compelling of the performance of contracts.

In

Bullard v. The State, 60 Ga. App. 33, 34, and 35,

one of the last cases under this statute to go to the Appellate

Courts of Georgia, I quote the fourth paragraph of the decision:

> "The constitution of Georgia (Code, Section 2-121), provides that 'There shall be no imprisonment for debt.' The gravamen of the offense chargeable under the Code, Sections 26-7408, 26-7409, is the fraud perpetrated, and these sections have for their 'purpose solely the punishment of fraud, and not the creation of a remedy for the collection of debts or the compelling of the performance of contracts.' *Mulkey v. State*, 1 Ga. App. 521, 523 (57 S. E. 1022). We quote from *Wilson v. State*, 138 Ga. 489, 491: 'This court has several times construed Section 715 (Sections 26-7408, 26-7409). It has uniformly been held that the offense therein declared was not for failure to perform service or pay debts, but was for fraudulently procuring money or other thing of value; that the fraudulent conduct of the defendant was the gist of the crime, not merely his failure to perform his contract.' *Lamar v. State*, 120 Ga. 312 (47 S. E. 958); *Lamar v. Prosser*, 121 Ga. 153 (7), 154 (48 S. E. 977); *Vinson v. State*, 124 Ga. 19 (2), 21 (52 S. E. 79); *Townsend v. State*, 124 Ga. 69 (52 S. E. 293); *Banks v. State*, 124 Ga. 15 (4), 17 (52 S. E. 74, 2 L.R.A. (N.S.) 1007); *Sterling v. State*, 126 Ga. 92 (54 S.E. 921); *Vance v. State*, 128 Ga. 661 (57 S.E. 889); *Dyas v. State*, 126 Ga. 556 (55 S. E. 448); *Latson v. Wells*, 136 Ga. 681 (71 S. E. 1052). The court erred in overruling the demurrers to the indictment, and the motion for a new trial. Judgment reversed."

As to the second part of the Act of Georgia assailed, which is codified as Section 716 of the Penal Code, there is a rule of evidence in proving the commission of the offense set out in the preceding section. It is a well settled rule of constitutional law that if two parts of an act, or two laws or sections of the Code in regard to the some subject matter, are severable in character, so that one may exist and carry out the legislative intent independently of the other, the holding of one to be

invalid will not necessarily result in declaring the other invalid. Section 716 of the Penal Code provides that satisfactory proof of the contract, the procuring thereon of money or the thing of value, the failure to perform the service so contracted for, or the failure to return the money so advanced with interest thereon at the time the labor was to be performed, without good and sufficient cause, and loss or damage to the hirer shall be deemed presumptive evidence of the intent referred to in the preceding section. Appellant contends that this section especially offends because it creates a presumption that is unreasonable which deprives a defendant of due process of law because it presumes him to be guilty and exposes him to conviction for fraud upon evidence only of a breach of contract and a failure to pay.

> "Constitutional law—due process of law—presumption and burden of proof.
>
> A state may, consistently with the due-process-of-law clause of U. S. Const., 14th Amend., create by statute a rebuttable presumption of guilty knowledge by the actual occupant of a farm from a finding upon the premises of apparatus for distilling prohibited intoxicating liquors, although, under the local law, a defendant in a criminal case may not testify as a witness, and husband and wife are not competent or compellable to give evidence in any criminal proceeding for or against each other."

Hawes v. State of Georgia, 258 U. S. 1, 66 L. Ed. 431.

That the legislature may make one fact prima facie evidence of another is certainly within the established power of a State in prescribing the evidence which is to be received in the Courts of its own government.

Adams v. New York, 192 U. S. 585, 588, 58 L. Ed. 575, 578, 24 Sup. Ct. Rep. 372.

Hawkins v. Bleakly, 243 U. S. 210, 214, 61 L. Ed. 678, 683, 37 Sup. Ct. Rep. 255, Ann. Cas. 1917D, 637, 13 N.C.C.A. 959.

> "The establishment of presumptions, and of rules respecting the burden of proof, is clearly within the domain of the state governments, and that a provision of this character, not unreasonable in itself and not conclusive of the rights of the party, does not constitute a denial of due process of law. *Mobile, J. & K. C. R. Co. v. Turnipseed,* 219 U.S. 35, 42, 55 L. Ed. 78, 80, 32 L.R.A. (N.S.) 226, 31 Sup. Ct. Rep. 136, Ann. Cas. 1912A, 463, 2 N.C.C.A. 243.
>
> "Undoubtedly there must be a relation between the two facts. *Bailey v. Alabama,* 219 U. S. 219, 55 L. Ed. 191, 31 Sup. Ct. Rep. 145; *McFarland v. American Sugar Ref. Co.,* 241 U. S. 79, 60 L. Ed. 899, 36 Sup. Ct. Rep. 498. That is, if one may evidence the other, there must be connection between them—a requirement that reasoning insists on, and, necessarily, the law."

Appellant also says that Section 716 deprives defendant of due process of law because the words "good and sufficient cause" are too vague and indefinite to provide a sufficiently ascertainable standard of guilt. We do not think that Section 716 above set out creates a presumption so arbitrary and unreasonable as to constitute a denial of due process of law, nor that the words "good and sufficient cause" are vague and indefinite. The words "good and sufficient cause" must be construed as to their meaning in this particular statute. It is reasonable to presume that where one obtains something of value from another by promising to do something in return and then fails to carry out the contract without any cause whatever, that he meant to deceive and defraud when he made the promise and procured the thing of value. The biggest illustration that anyone knows anything about is the case of Hitler. He promised faithfully that if Czechoslovakia be given to him he would cease aggression, and immediately upon obtaining it he demanded Poland. A billion reasonable people immediately presumed with reason that he was lying when he made his first promise and procured Czechoslovakia. The

United States Government has presumed the same thing so strongly that when he says he has no designs on us, it is spending a hundred billion dollars to back up its presumption. But let us turn the cold light of reason and logic upon this section as it has been construed by the State Courts and see if it creates an unreasonable and arbitrary presumption and if the words "good and sufficient cause" are vague and indefinite. It will be presumed that a man intends the natural consequence of his acts. This is a well settled presumption of law. A condition once proved to exist will be presumed to continue to exist. This is a well settled presumption of law. Actions speak louder than words. This is an axiom or truism universally recognized. It can without doubt be conceded that if a person fails to perform the service contracted for or fails to return the money procured as an advancement, that no matter what his intent might have been when he procured the advancement, at the time of the failure his intent was to do what he did, that is, not to perform and not to return the money. Reasoning further: At the time he procured the advancement he had some kind of intent. Then it goes without question that he had the same intent when he procured the advancement as he wound up with when he failed to perform, *unless something happened to change the intent.* What could happen to change his intent from the time he got the advancement to the time he failed to perform or return the money? Broadly speaking, it could have been anything which affected him enough mentally, morally, or physically to change his mind or his intent. Of course, if he suffered physical injury he could not perform. Any cause which caused this change was a *good and sufficient cause* under the law as construed by the Georgia Courts because it would negative the intent to defraud and thus criminal responsibility. The burden is on the State then to prove that nothing happened that would affect the defendant enough mentally, physically or morally to make his intent, or we may say prop-

erly, his mind, to change. If at the time he got the advancement he had the intent to perform or pay back the money, he could not be found guilty, no matter if his intent was changed one minute later from *any* cause.

Any cause that would change the *defendant's* mind, not my mind, not your mind, but the *defendant's* mind, is a *good and sufficient cause.*

If his intent changed, there had to be a good and sufficient cause. The burden is on the State to prove that there was *no* good and sufficient cause. Therefore, the burden is on the State to prove that his mind or his intent did not change. It follows: That the burden is on the State to prove that when the defendant procured the advancement he had the same intent with which he wound up, i.e., not to perform and not to pay back the advancement.

And so we reach the inevitable conclusion that the State must prove by probative facts under the rules of evidence applicable to any other kind of case, that the defendant had the fraudulent intent not to perform the contract and not to pay the money back when he procured the advancement; and that proof of the contract, proof of the advancement, proof of failure to perform or pay the money back and proof of loss to the hirer does not, and cannot create a presumption of such fraudulent intent, *because* of the "good and sufficient cause" rule.

The Georgia Appellate Courts, although their decisions do not show that they arrived at this conclusion as it was arrived at above, have held and construed the law in the same manner.

Johnson v. The State, 7 Ga. App. 812.

> "To sustain a conviction of a violation of the 'labor-contract act' of 1903 (Acts 1903, p. 90), the evidence must show that there was a fraudulent intent at the time when the money or other thing of value was obtained

from the employer, *and* that the laborer failed to perform his contract or repay his advances, without good and sufficient cause. None of these facts were shown in this case. The evidence does not in any essential particular support the verdict."

In the case of

Thorn v. The State, 13 Ga. App. 10,

the Court holds as follows

"As has frequently been held by the Supreme Court, and as also held by this court, the burden is on the State to prove that the failure of the accused to perform the service contracted for, or to return the money, was without good and sufficient cause. *Brown v. State,* 8 Ga. App. 212 (68 S.E. 865); *Mason v. Terrell,* 3 Ga. App. 348-9 (60 S.E. 4). The failure to perform the services or return the money is presumptive evidence of an undisclosed intent to defraud only when it appears that there was no good and sufficient cause why the contract was not performed. Hence, to complete its presumptive case, the State must show that there was no good reason why the contract was not performed, or, in default thereof, that there was no good reason why the accused did not return the money advanced to him. Without this proof the State's case is incomplete because the prosecution has not created the evidentiary presumption necessary to rebut the presumption of innocence. Presumably the accused had good and sufficient cause. It is only after the State has made it appear that there was no sufficient cause or good reason why the accused did not perform his contract, or else return the money, that the State has made even a prima facie case."

One of the latest decisions of the Appellate Courts of Georgia showing how strictly construed this law is is found in

Banton v. The State, 57 Ga. App. 173, 174.

Justice Guerry wrote the opinion, which I set out below:

"The Code, Sections 26-7408, 26-7409, makes it a misdemeanor to fraudulently procure money on a contract

for services. The purpose of this law 'is not to enforce the contract to perform services, but to punish the fraudulent procurement of money, or other thing of value under the contract.' *Brown v. State*, 8 Ga. App. 211 (68 S.E. 865). 'Because of the nature of this law, and lest it be abused, the courts have been strict in requiring the State to allege and prove those things which, under the statute, are necessary for a conviction.' *Winters v. State*, 32 Ga. App. 56 (122 S. E. 635). To make a prima facie case the State must prove, among other things, a definite contract (*Sanders v. State*, 7 Ga. App. 46, 65 S. E. 1071; *Adams v. State*, 10 Ga. App. 801, 74 S. E. 95; *Starling v. State*, 5 Ga. App. 171 (4), 62 S. E. 993); that the defendant failed to perform the services so contracted for, without good and sufficient cause (*Simmons v. State*, 18 Ga. App. 65 (2), 66, 88 S. E. 800; *Ashley v. State*, 22 Ga. App. 626, 97 S. E. 82; *Crayton v. State*, 26 Ga. App. 426 (3), 106 S. E. 919; *Johnson v. State*, 125 Ga. 243 (3), 54 S. E. 184; *Hankinson v. State*, 6 Ga. App. 793, 65 S. E. 837; *Thorn v. State*, 13 Ga. App. 10 (2), 78 S. E. 853); and that he failed to return the money so advanced, with interest thereon at the time said labor was to be performed, without good and sufficient cause, and all to the loss and damage to the hirer. *Lewis v. State*, 15 Ga. App. 405 (3) (83 S.E. 439); *Abrams v. State*, 126 Ga. 591 (55 S.E. 497); *Coleman v. State*, 6 Ga. App. 398 (5) (65 S.E. 46); *Mobley v. State*, 13 Ga. App. 728 (79 S. E. 906). Mere proof that the defendant failed to carry out the contract does not give rise to a presumption that he did so without good and sufficient cause (*Thorne v. State*, supra; *Beeman v. State*, 17 Ga. App. 752, 88 S. E. 408, and cit.), nor is such essential element supplied by statements of the hirer that he knew of no good reason why the laborer did not comply with the contract. *King v. State*, 36 Ga. App. 272 (136 S.E. 466); *Wood v. State*, 39 Ga. App. 355 (147 S. E. 780); *Cofer v. State*, 34 Ga. App. 220 (129 S.E. 110); *Barlow v. State*, 42 Ga. 437 (156 S. E. 641)."

It would seem then that instead of depriving the accused of

any of his constitutional rights or rights under any statute of the United States, the Georgia statute assailed in this case allows him to be convicted, upon proper proof only, of obtaining something of value with a fraudulent intent at the time of obtaining it, and that this fraudulent intent can only be proved by extraneous evidence and cannot be inferred from his failure to perform the contract or return the money. In addition to this it furnishes him with four avenues of escape from the consequence of his crime not granted to defendants in other types of cheating and swindling cases, namely: (1) If the contract was not definite in every particular, he escapes. (2) If he repents and does the work promised, he escapes. (3) If he repents and pays back the money, he escapes. (4) If his criminal conduct fails to cause loss or damage to the hirer, he escapes.

The truth about the matter is it is practically impossible to convict under these two sections of the Code.

Ferguson v. The State, 18 Ga. App. 730.

"Broyles, J. The defendant was convicted of a violation of the 'labor-contract act' (Acts 1903, p. 90; Park's Penal Code, Sections 715, 716). In order to sustain the constitutionality of this act, our Supreme Court has considered it necessary to give to the act a very strict construction. This construction has of course been followed by this court, in reviewing cases based upon alleged violations of this act. Under such a strict construction it has been (as is shown by the large number of such cases in which there have been reversals by the Supreme Court and this court) a very difficult matter for a reviewing court to sustain convictions secured under this act; and this case is no stronger than the average one. The evidence adduced upon the trial was clearly insufficient to authorize the conviction of the accused. Judgment reversed."

The case relied on by counsel for Appellant is

Bailey v. Alabama, 219 U. S. 219, 236.

In

Wilson v. The State, 138 Ga. 489, 495,

Justice Atkinson wrote the opinion and we respectfully refer this Court to his opinion appearing on pages 491 through 495, wherein he distinguishes the Alabama statute in question from the Georgia statute in question holding that there are material differences both in the Alabama statute and in the defendant's right to make a statement and the weight and credit to be given this statement by the jury and in the Georgia rule of evidence from the Alabama rule of evidence.

IV.

This statute is not repugnant to the Equal Protection Clause of the 14th Amendment.

The statute applies equally to all races. In the nature of things the master does not ordinarily procure advances from his servant, or the employer from his employee. Legitimate classification is not unjust discrimination. There are a very large number of laws upon the statute books imposing penalties upon certain persons without also providing for penalties as to others, though having some relation with them. The abandonment of a child by its father is made a misdemeanor. Penal Code, Section 114. But it is not declared criminal for a child to abandon its father. It is evident that the same duty does not rest upon both, and the two are not in the same situation. Enticing away apprentices is unlawful. Penal Code, Section 119. But nothing is said as to putting any penalty on the employer. Wilfully or maliciously to burn, or to attempt to burn, any railroad bridge is declared to be arson, although other bridges are not mentioned. Penal Code, Section 145. Selling liquor without a license is made criminal

although no penalty is imposed by law upon the purchaser. Penal Code, Sections 431, 433. Any baker or other person selling bread under the size established by the corporation of any city, town, or village, or the rules laid down by law, shall be punished as for a misdemeanor, but no punishment is provided for the man who buys the undersized bread, the loss incurred falling on him. Penal Code, Section 661. It is criminal for bank officers to purchase any bill, check, or other evidence of debt issued by the bank, for less than its face value; but the seller is not punished. Penal Code, Section 209. These are only a few of the many instances which might be cited, but they will suffice to show that where two persons deal with each other and the conduct of one requires safeguarding, criminal laws have been shaped for that purpose; and they have never been considered unconstitutional.

But there is a provision of the law of Georgia under which the employer could be prosecuted if he used fraudulent promises and had the intent to defraud in obtaining the services of the employee. This provision of the Code of Georgia follows the statute assailed in this case and it is Section 719 of the Penal Code of Georgia and reads as follows:

> "Other offenses of like kind.—Any person using any deceitful means or artful practice, other than those which are mentioned in Part XII of this Title, by which an individual, or a firm, or a corporation, or the public is defrauded and cheated, shall be punished as for a misdemeanor."

Under this Code Section it has been held as follows:

Oliver v. The State, 15 Ga. App. 452.

> "Wade, J. I. When one, by using any deceitful means or artful practice other than those specifically mentioned in the Penal Code, obtains the money or goods of another, the offense defined in Section 719 of the Penal Code of 1910 is complete as soon as the owner of the

money or goods is thus deprived of his property. *Love v. State,* 111 Ga. 650 (36 S. E. 856). 'The offense of obtaining property by false pretenses is complete when the property is obtained.' 12 Am. & Eng. Enc. Law (2d ed.), 835 (7)."

So it plainly appears that should the employer obtain the services of a laborer with intent to defraud him of their value, he could be convicted under the Georgia law and even if he repented and later on paid him he could be punished because a crime was complete when he fraudulently obtained the services.

Conclusion

And so in conclusion, it has been plainly shown by the records and court decisions of the State of Georgia that she has as jealously guarded the liberties and constitutional rights guaranteed to her citizens by the Constitution of the United States and the Constitution of Georgia as does any state in the Union, yes, even as does the Supreme Court of the land.

Respectfully submitted,

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No. 70

In the Supreme Court of the United States

OCTOBER TERM, 1941

IRA TAYLOR, APPELLANT

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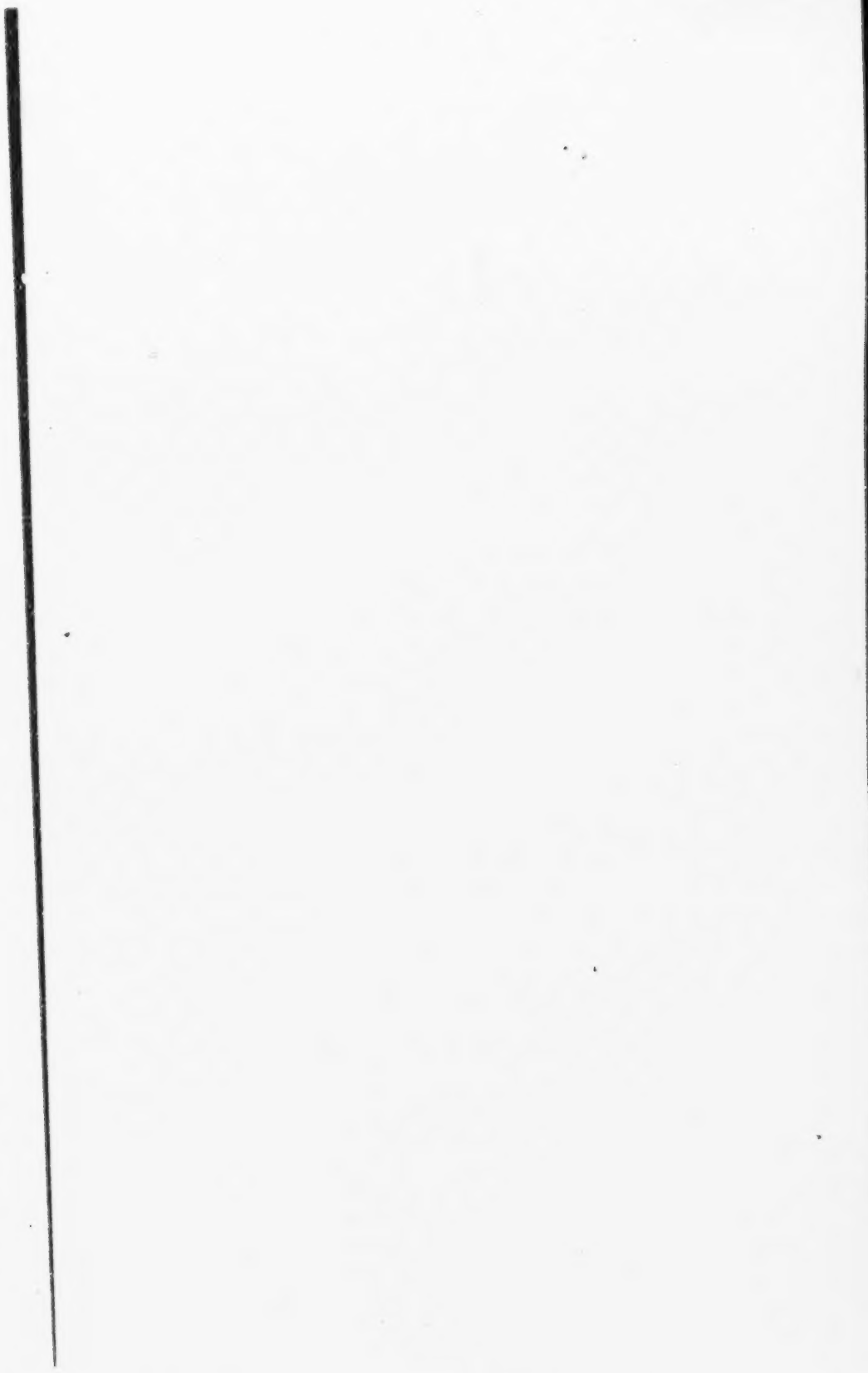
THE STATE OF GEORGIA

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

INDEX

CITATIONS



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PRELIMINARY STATEMENT[1]

The Georgia statute here involved[2] provides in substance that any person who contracts to perform service for another with intent to procure money thereby and not to perform the service, or who, after having so contracted, procures money

[1] The facts, which are not disputed, are adequately set forth in the brief for appellant, pages 4–8.

[2] Act of August 15, 1903, Ga. Laws 1903, pp. 90–91; Ga. Code 1933, secs. 26–7408, 26–7409, copied at pages 2–3 of appellant's brief.

from the hirer with intent not to perform the service, shall, upon conviction, be subject to criminal punishment; and that proof of the contract, the procuring thereon of money, and failure to perform the service or return the money with interest, without good and sufficient cause, shall be deemed presumptive evidence of such intent.

We agree with the contentions of appellant that the statute contravenes the Thirteenth Amendment and the federal legislation prohibiting peonage. We think, also, that the Georgia statute violates the Fourteenth Amendment in that it creates an arbitrary and unreasonable presumption of guilt. The invalidity of the statute in these respects is discussed at pages 3–8.

The chief interest of the United States in this case lies in the fact that the Georgia statute hinders the enforcement in that State of federal criminal statutes safeguarding civil rights secured by the Constitution and laws of the United States. The Department of Justice is charged with the responsibility of enforcing the following sections of the Criminal Code: Section 269 (18 U. S. C.,

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[1] Act of March 2, 1867, c. 187, 14 Stat. 546; Rev. Stat., sec. 1990, 8 U. S. C., sec. 56; Rev. Stat., sec. 5 [illegible], Criminal Code, sec. 269, 18 U. S. C., sec. 444. This legislation declares that all laws of any state, by virtue of which any attempt should be made "to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise," shall be null and void, and punishes criminally the holding of any person in peonage.

sec. 444), prohibiting the holding or returning of any person to a condition of peonage; Section 268 (18 U. S. C., sec. 443), prohibiting the carrying away of any person to be held as a slave; Section 19 (18 U. S. C., sec. 51), prohibiting conspiracies to injure or oppress any citizen in the exercise of rights or privileges secured by the Constitution and laws of the United States; and Section 20 (18 U. S. C., sec. 52), prohibiting the deprivation of such rights under color of state law.

Recent federal investigations in Georgia have disclosed that the involuntary service of debtors has been coerced in whole or in part by the threat of prosecution under the state statute. In the face of colorable legality under the state law of such enforced labor in liquidation of debts, it is impossible as a practical matter to obtain indictments and convictions and the result has been that the federal statutes have been rendered nugatory. It is for this reason, principally, that the Department appears in this case, as *amicus curiae,* in support of the appeal.

ARGUMENT

I

THE GEORGIA STATUTE VIOLATES THE THIRTEENTH AMENDMENT AND THE FEDERAL LEGISLATION PROHIBITING PEONAGE

In terms and effect the Georgia statue is identical with the Alabama statute held invalid in

Bailey v. *Alabama*, 219 U. S. 219.[4] Like that statute, the Georgia law purports to be aimed at a species of fraud on employers—the procurement of an advance with intent not to perform the agreed service—but permits proof of that intent, which is the gravamen of the offense, to be supplied merely by a presumption that the intent existed if the services were not performed or the money refunded "without good and sufficient cause." However, as this Court said in the *Bailey* case, proof of these facts establishes merely a breach of contract for personal service (219 U. S., at 233–234). These facts are, of course, as consistent with an initial innocent intent as with a fraudulent intent and without more would require an acquittal.[5] Nevertheless, by virtue of the stat-

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[4] The Alabama statute (Alabama General Acts, 1907, pp. 636–627; see 219 U. S., at 227–228) provided that "Any person, who with intent to injure or defraud his employer, enters into a contract in writing for the performance of any act of service, and thereby obtains money * * * from such employer, and with like intent, and without just cause, and without refunding such money, * * * refuses or fails to perform such act or service, must on conviction be punished * * *. And the refusal or failure of any person, who enters into such contract, to perform such act or service * * * or refund such money, * * * without just cause shall be prima facie evidence of the intent to injure his employer * * * or to defraud him."

[5] The Georgia Code, 1933, Sec. 38–109, provides: "To warrant a conviction on circumstantial evidence, the proved facts shall not only be consistent with the hypothesis of guilt, but shall exclude every other reasonable hypothesis save that of the guilt of the accused." See also *Cooper* v. *State*, 2 Ga. App. 730, 734.

utory presumption the State may prosecute any person who has contracted to perform service, received an advance of money, and then failed to perform without sufficient cause. Not only does this presumptive evidence of intent justify prosecution, but, as appears from the charge of the trial court in the instant case (R. 21–22), it is sufficient in itself to warrant a conviction. See *Barnes* v. *State*, 3 Ga. App. 333.

The undoubted *in terrorem* effect of this presumption is to coerce the performance of labor contracts. Since failure to perform automatically subjects the debtor to the risk of criminal prosecution, the statute operates as a threat to the innocent no less than to the guilty. By merely making an advance upon a promise to serve, the employer may utilize the coercive power of a threat of prosecution to compel the debtor to work out his debt.

We think it is clear that, to use the language of this Court in the *Bailey* case (219 U. S., at 238), the "natural and inevitable effect [of the statute] is to expose to conviction for crime those who simply fail or refuse to perform contracts for personal service in liquidation of a debt, and judging its purpose by its effect that it seeks in this way to provide the means of compulsion through which performance of such service may be secured."

Under the compulsion of the statute the debtor is not free to leave the service of the employer unless he is willing to incur the risk of prosecution and conviction for crim[illegible] He is in truth bound to the employer until he has worked out his debt or paid it. The condition or status thus created is peonage—compulsory service in payment of a debt. *Clyatt* v. *United States*, 197 U. S. 207, 215; *Bailey* v. *Alabama*, *supra*, at 242. Peonage, of course, is a form of involuntary servitude forbidden by the Thirteenth Amendment (*Slaughterhouse Cases*, 16 Wall. 26, 72; *Clyatt* v. *United States*, *supra*); and under the federal legislation prohibiting peonage (note 3, *supra*, p. 2) all state laws by which it should be attempted to enforce the "service or labor of any persons or peons, in liquidation of any debt or obligation," are null and void.

In the *Bailey* case this Court held (219 U. S., at 244–245) that the presumption created by the Alabama statute exposed the accused to conviction and punishment for crime upon proof merely that he had failed or refused to serve without paying his debt and that in its natural operation the statute furnished an instrument for the compulsion which the Thirteenth Amendment and the federal legislation forbid. That decision is squarely applicable here.[6]

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[6] In *Wilson* v. *State*, 138 Ga. 489, followed in its opinion in the case at bar (R. 39), the Supreme Court of Georgia endeavored to distinguish the Georgia act from the Alabama statute on the ground that whereas in Alabama the accused

II

THE GEORGIA STATUTE CREATES AN ARBITRARY AND UNREASONABLE EVIDENTIARY PRESUMPTION AND IS THEREFORE VIOLATIVE OF THE FOURTEENTH AMENDMENT

In *Bailey* v. *Alabama*, 219 U. S. 219, 245, this Court said that since the statute there involved was invalid under the Thirteenth Amendment and the federal legislation prohibiting peonage, it was unnecessary to consider whether it also violated the Fourteenth Amendment.

The appellent here argues that the Georgia statute infringes both the due process and equal protection clauses of the Fourteenth Amendment. Since we think the statute clearly violates the due process clause, we deem it unnecessary to consider whether it falls within the condemnation of the equal protection clause.

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could not testify at all as to his uncommunicated intent, in Georgia he could make a "statement" not under oath. This distinction is illusory. The fact remains that the accused is not a competent witness. Though the jury may give his statement credence, it is, of course, not testimony under oath. In any event, the holding in the *Bailey* case rested upon a broader base. The decision was that the State may not "punish the servant as a criminal for the mere failure or refusal to serve without paying his debt" and that it may not attempt to accomplish the same result indirectly "by creating a statutory presumption which upon proof of no other fact exposes him to conviction and punishment" (219 U. S., at 244).

The reasoning in the *Bailey* decision impels the conclusion that this Court necessarily deemed the similar presumption in the Alabama statute arbitrary. And in holding analogous statutory presumptions invalid under the due process clause this Court, in later decisions, relied upon its decision in the *Bailey* case. *Manley* v. *Georgia*, 279 U. S. 1, 6, 7; *Western & Atl. R. Co.* v. *Henderson*, 279 U. S. 639, 644.

As is made manifest by the *Bailey* decision, it cannot realistically be urged that the failure to repay money advanced or to perform the service for which it was advanced necessarily implies that the money was originally obtained with the intent not to perform the service, or make repayment. Nor is such a statute made any less arbitrary by the restriction that the accused may be found guilty only if he fails to repay or to perform the service contracted for "without good and sufficient cause." In every case in which civil liability is imposed for breach of contract the defaulting contractor has failed to carry out the terms of his undertaking without good and sufficient cause. The pragmatic effect of a statute of this character is, as this Court said in the *Bailey* case (219 U. S., at 236), that the accused stands "stripped by the statute of the presumption of innocence, and exposed to conviction for fraud upon evidence only of breach of contract and failure to pay."

CONCLUSION

The Georgia statute is repugnant to the Thirteenth and Fourteenth Amendments and the federal legislation prohibiting peonage. It differs in no substantial respect from the statute condemned by this Court in *Bailey* v. *Alabama*, 219 U. S. 219. The decision of the Supreme Court of Georgia upholding the statute should be reversed.

Respectfully submitted.

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P. 1

SUPREME COURT OF THE UNITED STATES.

No. 70.—October Term, 1941.

Ira Taylor, Appellant,
vs.
The State of Georgia.
} Appeal from the Supreme Court of the State of Georgia.

[January 12, 1942.]

Mr. Justice Byrnes delivered the opinion of the Court.

Appellant was indicted in the Superior Court of Wilkinson County, Georgia, for violation of §§ 7408 and 7409, of Title 26 of the Georgia Code. Section 7408 provides:

"Any person who shall contract with another to perform for him services of any kind with intent to procure money, or other thing of value thereby, and not to perform the service contracted for, to the loss and damage of the hirer; or after having so contracted, shall procure from the hirer money, or other thing of value, with intent not to perform such service, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as ~~prescribed in section 1069 [now section 1005] of the Code~~[1] for a misdemeanor."

And Section 7409 declares:

"Satisfactory proof of the contract, the procuring thereon of money or other thing of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section."[2]

The indictment alleged that appellant had entered into a contract with R. L. Hardie to perform manual labor for $1.25 a day until he had earned $19.50 at that rate, that he had done so with the intent not to perform the services, that he had thus obtained the $19.50 as an advance, that he had failed without good and sufficient cause to do the work, that he had failed and refused to

[1] Section ~~1069 [now section 1005]~~ of the Georgia Penal Code [Ga. Code (1933), Title 27, § 2506] provides: "Except where otherwise provided, every crime declared to be a misdemeanor shall be punishable by a fine not to exceed $1,000, imprisonment not to exceed six months, to work in the chain gang on the public roads, or on such other public works as the county or State authorities may employ the chain gang, not to exceed 12 months, any one or more of these punishments in the discretion of the judge . . . ."

[2] These two sections were enacted as sections one and two of the Act of August 15, 1903. Ga. Laws (1903) 90.

repay the $19.50, and that loss and damage to Hardie had resulted. Appellant demurred to the indictment, asserting that §§ 7408 and 7409, upon which it was based, were repugnant both to the Thirteenth Amendment and the Act of Congress passed pursuant to it,[3] and to the due process clause of the Fourteenth Amendment. The demurrer was overruled, exception was taken, and the case went to trial.

Hardie was the only witness for the State. He testified that the agreement had been made, that he had advanced the $19.50, that appellant had neither done the work nor returned the money, and that although appellant had said something about being sick, he had given no visible sign of it and had not been confined to bed. Under the statutes of Georgia[4] appellant could not testify under oath, but he was permitted to make an unsworn statement in which he generally denied that he and Hardie had made the agreement or that Hardie had paid him the $19.50. The trial judge charged the jury in the language of §§ 7408 and 7409. He refused to instruct the jury that these sections are repugnant to the Thirteenth and Fourteenth Amendments of the Constitution of the United States.

The jury returned a verdict of guilty and judgment of conviction was entered. Appellant moved for a new trial on the ground that §§ 7408 and 7409 violated provisions of both the federal and state Constitutions, and the motion was denied. On appeal, the conviction was affirmed by the Supreme Court of Georgia.

We think the conviction must be reversed. There is no material distinction between the Georgia statutes challenged here and the

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[3] The Thirteenth Amendment reads: "Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this Article by appropriate legislation."

U. S. C., Title 8, Section 56 reads: "The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void."

U. S. C., Title 18, Section 444, reads: "Whoever holds, arrests, returns or causes to be held, arrested, or returned, or in any manner aids in the arrest or return of any person to a condition of peonage, shall be fined not more than $5,000, or imprisoned not more than five years, or both."

[4] Georgia Code (1933), Title 38, §§ 415, 416.

Alabama statute which was held to violate the Thirteenth Amendment in *Bailey* v. *Alabama*, 219 U. S. 219.[5] It is argued here, just as it was in the *Bailey* case, that the purpose of § 7408 is nothing more than the punishment of a species of fraud, namely, the obtaining of money by a promise to perform services with intent never to perform them. And the presumption created by § 7409 is said to be merely a rule of evidence for the trial of cases arising under § 7408. Actually, however, § 7409 embodies a substantive prohibition which squarely contravenes the Thirteenth Amendment and the Act of Congress of March 2, 1867.[6] Its effect is to authorize the jury to convict upon proof that an agreement has been reached, that money has been advanced on the strength of it, that the money has not been returned, that the appellant has failed or refused to perform the services "without good and sufficient cause," and nothing more. The necessary consequence is that one who has received an advance on a contract for services which he is unable to repay is bound by the threat of penal sanction to remain at his employment until the debt has been discharged. Such coerced labor is peonage. And it is no less so because a presumed initial fraud rather than a subsequent breach of the employment contract is the asserted target of the statute. It is of course clear that peonage is a form of involuntary servitude within the meaning of the Thirteenth Amendment and that the Act of 1867 is an "appropriate" implementation of that Amendment. *Clyatt* v. *United States*, 197 U. S. 207.

We are told that the manner in which these sections have been interpreted by the courts of Georgia rescues them from invalidity. It is urged that the phrase "without good and sufficient cause", which appears in § 7409, in effect requires proof of fraudulent intent at the time of making the contract and obtaining the money. But this argument is wide of the mark. The words "without good and sufficient cause" plainly refer to the failure to perform the services or to return the money advanced. Since the subsequent breach of the contract by the defendant, however capricious or reprehensible, does not establish a fraudulent intent at the initial stage of the transaction, the content which has been assigned to the phrase "without good and sufficient cause" by the Georgia courts is immaterial. See *Bailey* v. *Alabama*, 219 U. S. at 233-234.

Moreover, as the Court observed in the *Bailey* case, "the controlling construction of the statute is the affirmance of this judg-

[5] And cf. State v. Oliva, 144 La. 51; Ex parte Hollman, 79 S. C. 9.

[6] See note 3, *supra*.

ment of conviction." 219 U. S. at 235. The most that the jury could have found in the evidence here was proof that the contract had been made, that $19.50 had been advanced, that the appellant had failed to do the work or to return the money, and perhaps that this failure had been "without good and sufficient cause". The presumption created by § 7409 was thus essential to the conviction.

It is true that it appears from the record that the Supreme Court of Georgia regarded it as unnecessary to determine the sufficiency of the evidence to support the verdict because "the defendant relies solely on constitutional grounds". And it is also true that it appears from the record that in his brief in that court the appellant stated: "Inasmuch as the defendant in seeking to set aside his conviction relies solely on constitutional grounds, the evidence set out in the record is material only in so far as it relates to these grounds." However, the only possible construction of this statement, in the light of appellant's consistent attack upon the presumption created by § 7409, is that appellant agreed to waive any contention that the evidence was insufficient to establish the factors declared by that section to warrant the presumption of an initial intent to defraud. He cannot fairly be said to have conceded more. Consequently, the Georgia Supreme Court could not escape the necessity of passing upon the validity of the presumption raised by § 7409 in order to sustain the conviction.

We are aware that in *Wilson* v. *State*, 138 Ga. 489, the Supreme Court of Georgia held that *Bailey* v. *Alabama* does not require the invalidation of these sections. Its error in so doing arose from a misconception of the scope of the *Bailey* decision. To be sure, a judicially created rule in Alabama denied to a defendant the opportunity to make any kind of statement as to his uncommunicated motives, and this circumstance drew the notice of the Court. 219 U. S. at 228, 236. In Georgia, on the other hand, a defendant is permitted to make an unsworn statement if he chooses. But the opinion in the *Bailey* case leaves no doubt that this factor was far from controlling and that its effect was simply to accentuate the harshness of an otherwise invalid statute.

We think that the sections of the Georgia Code upon which this conviction rests are repugnant to the Thirteenth Amendment and to the Act of 1867, and that the conviction must therefore be reversed.

Reversed.

Mr. Justice ROBERTS took no part in the decision of this case.